

ESSAY

TYRANNY IN AMERICA: WOULD ALEXIS DE TOCQUEVILLE RECOGNIZE THIS PLACE?

*Malcolm Wallop**

I. INTRODUCTION

The government of the United States of America is corrupt beyond any level in its history. No, it is not more venal. It is not more driven by greed. It takes no more bribes and sells no more influence than in its past. Rather it is consumed and corrupted by its own pervasive and expanding powers. It is drunk on its growth. No more is government made up of public servants. Its employees outnumber the employees in America's manufacturing sector. It now views itself as master and the public as servant.

Government has lost any sense of or respect for its Constitutional underpinning, which it now too frequently views as an impediment to its exercise of power. Americans are subjected to government seizures of property, preemption of property rights, illegal and unapologetic searches, and a suffocating regulatory burden, while government uses its unlimited resources to compel compliance and discourage any challenges to its authority and methods. It is a classic David and Goliath scenario—but David isn't winning many confrontations any more. In fact, with increasing frequency, government officials have, in various confrontations with citizens, even assumed "license to kill" in a gross distortion of "frontier justice."

Whether the IRS, BATF, OSHA, EPA, FAA, Corps of Engineers, DOT, BLM, Forest Service, RTC, FDIC,¹ or other agencies are involved, the modern bureaucracy seeks to coerce response rather than serve the governed. Not surprisingly, many Americans are now actively trying to serve, even please, their government lest it take notice of them. County commissioners, mayors, farmers, truckers, bankers, small businessmen, school board members, property owners, eccentrics and dozens of others—all fear or dread confrontations with government.

All of this is being done under the guise of protecting "We The People" from each other, from special interests, and from numerous "crises"—whether real, imagined, or manufactured. We are repeatedly asked to surrender our inalienable rights, allegedly so that government can protect us and ensure our security. Sadly, we too often do acquiesce out of fear either of the government or its agents.

* Malcolm Wallop is a United States Senator (R-Wyo.). He is retiring in 1995 at the end of his third term.

1. Internal Revenue Service; Bureau of Alcohol, Tobacco & Firearms; Occupational Safety & Health Administration; Environmental Protection Agency; Federal Aviation Administration; United States Army Corps of Engineers; Department of Transportation; Bureau of Land Management; United States Forest Service; Resolution Trust Corporation; and Federal Deposit Insurance Corporation.

In his seminal work, *The Road to Serfdom*, Nobel Laureate F.A. von Hayek discussed two competing (if not conflicting) notions of freedom. There is the traditional notion of freedom from coercion—the concept enshrined in the Declaration of Independence and the Bill of Rights—which maintains that man ought to be left, to the greatest extent possible, to his own faculties and abilities to sustain his existence. The other notion of freedom, the concept of freeing mankind from want, maintains that society's first obligation (and thus government's primary mandate) is to alleviate human need even at the expense of peoples' liberties. This latter notion of freedom has become increasingly popular in modern society, and the first notion is suffering for it.

Of course, anyone listening to the rhetoric emanating from our elected public officials in Washington cannot be sure what to believe. It is no wonder people have come to view their elected officials—especially those at the national level of government—with skepticism, disdain, and contempt. Just look at the tremendous gap one finds in the Nation's Capitol these days between rhetoric and reality.

For instance, in concluding a speech delivered October 12, 1993, at the University of North Carolina, President Clinton sounded much like the "new Democrat" we had been promised during the campaign:

We want to revitalize the American spirit of enterprise and adventure. We want to give people new confidence to dream those great dreams again, to take those great risks, to achieve those great things. The security I seek for America is like a rope for a rock climber, to lift those who will take responsibility for their own lives to greater and greater pinnacles. The security I seek is not government doing more for people but Americans doing more for ourselves and for our families, for our communities and for our country. It is not the absence of risk, it is the presence of opportunity. It is not a world without change, but a world in which change is our friend and not our enemy The only difference between America two centuries ago and America today is the difference between dawn and high noon of a very beautiful day.²

While the sentiment expressed in this passage is laudable, beneath the veneer of such righteous oration—as vacuous or deceptive as it may be—there is a more sinister, deleterious process at work: government officials pledge fealty to rights, opportunity and private initiative; while the people experience a continual, systematic erosion of their freedoms, property, individuality, and ultimately, their way of life.

Our dilemma—a government addicted to power and oblivious to our rights—has developed over the years due to a combination of factors. I will explore and analyze these factors in some detail. I will also examine the degree to which the Clinton Administration *embodies* the worst aspects of this disturbing trend, and how the President's program of "reforms" actually expands the level of dominance which government has in our lives, empowering it to a historic—and terrifying—degree of supremacy vis a vis the citizens it is expected to serve. Finally, I will discuss the proper role for government to play in society and assess how Americans can reclaim some (if not all) of that which they have lost over the years.

2. President's Remarks at the 200th Anniversary of the University of North Carolina at Chapel Hill on Oct. 12, 1993, WEEKLY COMP. PRES. DOC. 2064 (Oct. 18, 1993) [hereinafter UNC Speech].

II. PRESIDENT CLINTON'S MODUS OPERANDI

President Clinton's speech at the University of North Carolina-Chapel Hill provided keen insight into the modus operandi of his Administration. This speech should serve as a warning alarm to the American people, alerting them to the hubris the Clinton Administration so often displays. The speech is also candid, stark evidence of that which is dangerous today in the relationship between government and the governed.

The Clinton Administration has invested tremendous time and energy exploring the themes, phrases and buzzwords which have the greatest impact and persuasiveness with the electorate. In his UNC speech, the President emphasized with a vengeance his theme of "security." In fact, he uttered the word twenty-one times. (At one point, he spoke it three times in one sentence and eight times in seven sentences.) This was no coincidence.

The American people, understandably skeptical about their government, are unlikely to welcome a huge, new government program—with the taxes, regulation, and bureaucracy which invariably follow—absent being persuaded that a crisis exists which the government must address. The President's strategy has been to create anxiety among the citizenry—in fact, create the crisis—and then present his package of "reforms" as a remedy. In order to make his audience more receptive to his call for social change, the President sprinkled throughout his speech numerous admonitions to instill fear, anxiety and doubt in the minds of his audience about their current situation and their prospects for the future:

And here at home, this new economy of ours offers much hope and opportunity. Yet every positive development seems to bring with it some jarring dislocation

We know that our health care is the finest in the world, but millions of us are just a pink slip away from losing their health insurance or one illness away from losing a life savings.

And that is why we have said you ought not to lose your job if you have a sick child or a sick parent. You ought to be able to take a little time off without losing your job

I hear the grievances of the 1980's, the grievances of times when workers were fired without thought, when investments were not made, when people were abused.³

To frustrate any dissent over the extent of these problems or the propriety of his plan to fix them, the President has characterized opponents of his policies as hopelessly and irretrievably mired in the past. His opponents are either ostriches with their collective heads in the sand, or simply reactionaries afraid of change. In his own words:

We are living in a time of profound change. No one can fully see the shape of the change or imagine with great precision the end of it. But we know a lot about what works and what doesn't. And we know that if we do not embrace this change and make it our friend . . . then change will become our enemy. And yet all around our great country today, I see people resisting change Instead of a reasoning

3. *Id.* at 2060-62.

argument about what will build America tomorrow, I hear a longing for yesterday. But I tell you, my friends, as certainly as it was true 200 years ago today, yesterday is yesterday. If we try to recapture it, we will only lose tomorrow.⁴

Reminiscent of his claim early on in the Administration that paying higher taxes was just a "patriotic" way to "contribute" to "the changes our country needs,"⁵ President Clinton invoked the memory of our Founding Fathers. He implored the audience to remember that our Nation was forged: "in the face of great uncertainty . . . [T]he Americans of that time had the courage to build what had never before existed, a great new republic . . . [T]hey decided to bet on the future, not cling to the past. That is the test for us today, my fellow Americans."⁶

President Clinton also invoked the name of renowned 19th century French political scientist, Alexis de Tocqueville, whom he quoted:

The Americans have all a lively faith in the perfectibility of man. They judge that the diffusion of knowledge must necessarily be advantageous, and the consequences of ignorance fatal. They all consider society as a body in a state of improvement, humanity as a changing scene, in which nothing is or ought to be permanent, and they admit that what appears to them today to be good, may be superseded by something better tomorrow.⁷

De Tocqueville was commenting, of course, on his *impressions* that Americans were inherently optimistic and committed to change and progress. Yet the President—consistent with his cavalier use of whatever words best suit his present purpose, regardless of their meaning—deliberately or carelessly invoked the respected name of de Tocqueville to support the Clinton premise, claiming that "Alexis de Tocqueville carries this uniquely American optimism . . . this commitment to change."⁸ What a disservice to Alexis de Tocqueville. What a rewriting of history. What nonsense!

Much of what de Tocqueville catalogued in *Democracy in America* was simply his observations of American society. As author and historian Richard D. Heffner, who edited an abridged version of *Democracy in America*, noted:

Yet Tocqueville was merely reporting, not approving. *Democracy in America* is no paean to the virtues of equalitarianism and majority rule. Quite to the contrary—and this is precisely what makes it so provocative and valuable for us today—this classic study thoroughly *rejects* Americans' now more than century old, magical equation of equality with freedom, democracy with liberty.⁹

While de Tocqueville did characterize the American people as being uniquely and inherently optimistic and idealistic, he did not necessarily infer from that that Americans or their elected officials would always make wise decisions. In fact, he counseled quite the opposite. De Tocqueville did not engage in the sophistry so prevalent today. He did not celebrate change for change's sake; he was, in fact, wisely

4. *Id.* at 2061.

5. President's Oval Office Address of Feb. 15, 1993, CONG. Q. WKLY. REP. 403 (Feb. 20, 1993).

6. UNC Speech, *supra* note 2.

7. *Id.*

8. *Id.*

9. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 11 (Richard D. Heffner ed., The New American Library 1956) (1838) (emphasis in original).

concerned about the future of modern democratic society—a concern we today must surely share and a lesson the President should more closely heed.

III. THE LESSONS OF HISTORY

In recently re-reading *Democracy in America*, I marveled at the degree to which, even in the early 1830's, de Tocqueville anticipated the powerful forces which would be at work in modern democratic societies. He identified several trends which are dominant facets of our society today.

De Tocqueville recognized the unprecedented level of equality and freedom which existed in the New World, but predicted that the populace would become less protective of their freedoms and more enamored of egalitarianism. He foresaw the attempts by even a popularly-elected government to usurp power not originally envisioned for it and the concomitant erosion of the rights of citizens. He anticipated the likelihood of citizens to surrender willingly many of their hard-won liberties in exchange for a greater measure of security in their lives. Make no mistake though. As Richard Heffner noted, what de Tocqueville may have perceived as inevitable or probable, he did not necessarily extol as desirable. In fact, he was greatly troubled.

Following his travels in the United States, de Tocqueville commented that "nothing struck me more forcibly than the general equality of condition amongst the people."¹⁰ He wrote in *Democracy in America*: "The more I advanced in the study of American society, the more I perceived that this equality of condition is the fundamental fact from which all others seem to be derived, and the central point at which all my observations constantly terminated."¹¹

Although he paid due homage to this unique and important attribute, de Tocqueville warned against zealous pursuit of "equality of condition" for its own sake. He understood the pernicious effect which strict egalitarianism—equality of condition and results, rather than opportunity and rights—would have upon individual and societal liberty. As such, his concerns mirrored those expressed decades earlier by the Framers of the United States Constitution.

In 1787, at the Constitutional Convention in Philadelphia, South Carolina's Charles Pinckney discussed the homogeneous nature of American society and argued that any government designed for our nation ought to take this factor into consideration:

The people of the U. States are perhaps the most singular of any we are acquainted with. Among them there are fewer distinctions of fortune & less of rank, than among the inhabitants of any other nation. Every freeman has a right to the same protection & security; and a very moderate share of property entitles them to the possession of all the honors and privileges the public can bestow: hence arises a greater equality, than is to be found among the people of any other country, and an equality which is more likely to continue—I say this equality is likely to continue, because in a new Country, possessing immense tracts of uncultivated lands, where every temptation is offered to emigration & where industry must be rewarded with competency, there will be few poor, and few dependent . . .¹²

10. *Id.* at 26.

11. *Id.*

12. THE FEDERAL CONVENTION AND THE FORMATION OF THE UNION OF THE AMERICAN STATES 166 (Winston U. Solberg ed., 1958).

Charles Pinckney's was a minority viewpoint in Philadelphia that summer. Most of the Framers took issue with his assessment that the Nation was homogeneous and that it would likely remain that way. James Madison of Virginia was one who rose to challenge Pinckney's evaluation of the circumstances which existed within the young Nation at the time:

In all civilized Countries the people fall into different classes having a real or supposed difference of interests. There will be creditors & debtors, farmers, merchants & manufacturers. There will be particularly the distinction of rich & poor. It was true as had been observed (by Mr. Pinckney) [sic] we had not among us those hereditary distinctions, of rank which were a great source of the contests in the ancient Governments as well as the modern States of Europe, nor those extremes of wealth or poverty which characterize the latter. We cannot however be regarded even at this time, as one homogeneous mass, in which every thing that affects a part will affect in the same manner the whole.¹³

As Madison later argued in No. 10 of *The Federalist Papers*:

As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed . . . The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors ensues a division of the society into different interests and parties.¹⁴

Most of the Framers believed that the Nation would only become increasingly more diverse and faction-ridden as the country grew in geographical size and population. The Framers realized they were about "to decide for ever the fate of Republican Government."¹⁵ Therefore, at the Constitutional Convention, Madison asserted, "In framing a system which we wish to last for ages, we should not lose sight of the changes which ages will produce."¹⁶ In evaluating what form of government to devise, it was vital to ponder the future characteristics and demands of a burgeoning, new, modern nation. But, it was just as prudent to take into account how these changes would impact upon the relationships among the legitimate competing interests within society, and between the citizens and their government.

Madison exhibited such foresight:

An increase of population will of necessity increase the proportion of those who will labor under all the hardships of life, and secretly sigh for a more equal distribution of its blessings. These may in time outnumber those who are placed above the feelings of indigence. According to the equal laws of suffrage, the power will slide into the hands of the former. No agrarian attempts have yet been made in this Country, but symptoms, of a leveling spirit, as we have understood, have suffi-

13. *Id.* at 176.

14. THE FEDERALIST NO. 10, at 79 (James Madison) (Clinton Rossiter ed., 1961).

15. THE FEDERAL CONVENTION AND THE FORMATION OF THE UNION OF THE AMERICAN STATES, *supra* note 12, at 177.

16. *Id.* at 176.

ciently appeared in a certain quarter to give notice of the future danger.¹⁷

Obviously, in Philadelphia in 1787, the tendency of people enamored by the concept of equality of condition to look to government to foster “a leveling spirit” had already been observed. How did the Framers seek to address this predicament?

In devising our government, our Founding Fathers had no misapprehension about the “perfectibility of man.” In fact, they chose to take full account of human nature and the inherent imperfection and contradictions which go with it. As James Madison noted in his notes on the deliberations of the Constitutional Convention of 1787, the purpose of the Senate in our national legislature was “first to protect the people against their rulers: secondly to protect the people against the transient impressions into which they themselves might be led.”¹⁸ In delineating the justification for separating the powers of government among different branches, Madison observed that:

A people deliberating in a temperate moment, and with the experience of other nations before them, on the plan of Government most likely to secure their happiness, would first be aware, that those charged with the public happiness, might betray their trust It would next occur to such a people, that they themselves were liable to temporary errors, through want of information as to their true interest¹⁹

And, in designing the national legislature, Madison took similar account of these tendencies when explaining the need for two uniquely composed and constituted chambers:

Another reflection equally becoming a people on such an occasion, would be that they themselves, as well as a numerous body of Representatives, were liable to err also, from fickleness and passion. A necessary fence against this danger would be to select a portion of enlightened citizens, whose limited number, and firmness might seasonably interpose against impetuous councils.²⁰

In addition to placing restraints upon government to protect citizens against tyrannical rulers and their own mistakes and misfortune, the Framers had to design a government which could adapt to the changing face of the nation as it grew, developed and matured—while still protecting the rights of its people. Even if one believed man to be perfectible or inherently altruistic, it would be naive and ludicrous to expect all citizens to always have the same interests at every turn of events or time: “It ought finally to occur to a people deliberating on a Government for themselves, that as different interests necessarily result *from the liberty meant to be secured*, the major interest might under sudden impulses be tempted to commit injustice on the minority.”²¹ To recognize and admit this is not to decry human nature, but simply to understand and appreciate its true character and to acknowledge the inherent conflicts that exist in modern societies.

“From the liberty meant to be secured” is a recurrent phrase—and a crucial distinction—among the Framers of the Constitution as it signifies their concerns and

17. *Id.*

18. *Id.* at 175.

19. *Id.*

20. *Id.* at 176.

21. *Id.* (emphasis added).

priorities. The whole concept of liberty, paramount in the minds of the Framers as they drafted our Constitution, would invariably perpetuate the pre-existing inequality of condition among the populace, thereby resulting in the competing interests seeking redress from the government. Perhaps New York's Alexander Hamilton expressed this sentiment best when he proclaimed: "It was certainly true: that nothing like an equality of property existed: that an inequality *would exist as long as liberty existed*, and that it would unavoidably result *from that very liberty itself*. This inequality of property constituted the great & fundamental distinction in Society."²²

Unlike the Clinton administration, the Founding Fathers had a healthy suspicion of government and the power it should wield. They devised a system of government, replete with checks and balances and both separated and shared powers, so as not to unnecessarily rely upon man's "perfectibility" for our nation to prosper. They did not permit government to reign unfettered; rather they sought to restrain those in power, to prevent them from infringing on the rights, property, and livelihood of the people. As Connecticut's Roger Sherman reportedly stated at the Constitutional Convention: "Government is instituted for those who live under it. It ought therefore to be so constituted *as not to be dangerous to their liberties*."²³

Despite the attention paid to securing and protecting the liberties of the people, could these in fact be maintained? De Tocqueville feared not. It appeared to de Tocqueville that the American people would ultimately pursue equality at the expense of their liberty. And there would always be those in government eager to take advantage of such an exchange. Not surprisingly, President Clinton chose not to discuss this theme of *Democracy in America*, even though the issue was of such great importance to de Tocqueville that he devoted considerable attention to it.

While de Tocqueville proclaimed the onset of democratic rule as the greatest political advancement then achieved by mankind, he also believed that popular democracy was not without its inherent flaws and inconsistencies. He described the circumstances in which a new breed of despotism might be established in democratic nations. "The species of oppression by which democratic nations [will be] menaced is unlike anything which ever before existed in the world."²⁴ Contrary to traditional notions of despotism and tyranny, he believed this despotism "might assume a different character; it would be more extensive and more mild; it would degrade men without tormenting them."²⁵

How might such a despotic government look? "I have no fear that [the people] will meet with tyrants in their rulers," de Tocqueville argued, "but rather with guardians."²⁶ His description was vivid and eloquent:

[It will be] an immense and tutelary power, which takes upon itself alone to secure [the people's] gratifications, and to watch over their fate. That power is absolute, minute, regular, provident, and mild. It would be like the authority of a parent, if, like that authority, its object was to prepare men for manhood; but it seeks, on the contrary, to keep them in perpetual childhood. For their happiness such a govern-

22. *Id.* at 178 (emphasis added).

23. *Id.* at 177 (emphasis added).

24. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 302 (Richard D. Heffner ed., The New American Library 1956) (1838).

25. *Id.*

26. *Id.*

ment willingly labors, but it chooses to be the sole agent and the only arbiter of that happiness; it provides for their security, foresees and supplies their necessities, facilitates their pleasures, manages their principal concerns, directs their industry, regulates the descent of property, and subdivides their inheritances: what remains, but to spare them all the care of thinking and all the trouble of living?²⁷

Stripped of both the obligation and the opportunity for individual responsibility, the people begin to believe themselves incapable of conducting their own affairs without government assistance or direction. Thus, mesmerized by the notion that government must be relied upon to solve their problems, satisfy their needs, and quench their desires, a free people may surrender their freedom and the ability to control their own destiny. Ultimately, a heretofore free and enterprising people become utterly dependent upon a government which has seen fit to inject itself into every aspect of their lives.

Such a government—on the surface, at the outset—may appear benevolent. Nothing could be further from the truth. As de Tocqueville recognized, once despotism has taken hold of the individual, it quickly turns its attention to society as a whole:

After having thus successively taken each member of the community in its powerful grasp, and fashioned him at will, the supreme power then extends its arm over the whole community. It covers the surface of society with a network of small complicated rules, minute and uniform, through which the most original minds and the most energetic characters cannot penetrate, to rise above the crowd. The will of man is not shattered, but softened, bent, guided; men are seldom forced by it to act, but they are constantly restrained from acting: such a power does not destroy, but it prevents existence; it does not tyrannize, but it compresses, extinguishes, and stupefies a people, 'til each nation is reduced to be nothing better than a flock of timid and industrious animals, of which the government is the shepherd.²⁸

De Tocqueville, however, did not absolve the citizenry of responsibility for the advent of such despotism. Rather, he believed that, in general, the public would willingly sacrifice many of their individual freedoms for a greater measure of security in their lives. He believed people would gladly trade the burdens and responsibilities which invariably fall upon a free and industrious people for the promise of greater comfort and complacency.

People often regard their freedoms casually—even cavalierly. That is exactly the problem now in Poland where we recently witnessed the phenomenon of people voting the Communists back into power. How did the Communists, consummate predators of freedom, win the support of the people? With promises that the government will ensure the security of the people by satisfying their needs and protecting them from daily concerns. But at what cost? Undoubtedly, the Communists will (as before) crush what opportunity existed in Poland for individual and collective freedoms to flourish. To elect them is to abuse liberty. They will extinguish freedom—without a concomitant increase in the personal and economic security of the people.

Ironically, one can appreciate how people in a formerly centralized, statist society embarking on a new experiment with democracy and freedom (with all the uncertainties that go with it) might desire security over freedom. Many of the former East Bloc nations—including Russia—have experienced similar movements. They have no

27. *Id.* at 303.

28. *Id.* at 303-04.

experience with the moral anchors of liberty, autonomy, and the rule of law to truly appreciate that which they may be giving up.

But what of us? What about America? We do have the moral grounding in freedom. The American Revolution, according to de Tocqueville, "was the result of a mature and reflecting preference of freedom, and not of a vague or ill-defined craving for independence. It contracted no alliance with the turbulent passions of anarchy; but its course was marked, on the contrary, by a love of order and law."²⁹ While the colonists vanquished one particular brand of despotism, their descendants may have created another—a society suffocating on an over-zealous infusion of infinite "rights" and entitlements.

Our people no longer distinguish between their fundamental liberties and a whole barrage of novel, manufactured "rights" doled out by a government ever eager for more power and influence and ever seeking to mollify a fickle electorate. What people fail to realize is that these new "rights" do not come without a cost. In the onslaught of new "rights," genuine fundamental rights are submerged by trivialization. Strong traditions, such as the notions of individual responsibility and civic virtue, are ridiculed as archaic concepts. Yet, these principles comprise the bedrock of freedom. Fracture them and true liberty is gone.

Even in the early 1880s, de Tocqueville noted that Americans were "constantly excited by two conflicting passions: they want to be led, and they wish to remain free."³⁰ And since they approached each of these seemingly conflicting notions with equal fervor, they endeavored to satisfy them both at once. De Tocqueville observed:

They devise a sole, tutelary, and all-powerful form of government, but elected by the people. They combine the principles of centralization and that of popular sovereignty; this gives them a respite: they console themselves for being in tutelage by the reflection that they have chosen their own guardians. Every man allows himself to be put in leading-strings, because he sees that it is not a person or a class of persons but the people at large, who hold the end of his chain. By this system, the people shake off their state of dependence just long enough to select their master, and then relapse into it again.³¹

It is truly astonishing how prescient he was!

IV. HEALTH CARE AND YOUR "RIGHT" TO BE SECURE

And we have now come full circle, back to President Clinton's speech at the University of North Carolina.

The President knows—all too well—that absent a crisis the American people will likely reject more government involvement in their lives. To sell his policies, the President must first generate fear and insecurity, in order to create the requisite crisis as well as a sense of guilt at having allowed such a situation to occur. He can then produce a government plan to solve the crisis, calm the fears and assuage the guilt.

The Democrats have spent years convincing people there is a health care crisis in this country. In 1988, Democratic presidential nominee, Massachusetts Governor Michael Dukakis, claimed that there were 37 million Americans without health insur-

29. *Id.* at 62.

30. *Id.* at 304.

31. *Id.*

ance?³² For years, the advocates of bigger government have demagogued the issue. In 1991, health care was the dominant issue in the campaign of Pennsylvania Democrat Harris Wofford for the Senate seat of the late John Heinz. Wofford won, and the creation of a national health care crisis was complete, as numerous candidates for public office (including Bill Clinton) hired Wofford campaign strategists James Carville and Paul Begala to duplicate the winning formula for them.³³

However, despite the years of demagoguery, public opinion polls indicate the vast majority of American people are both currently covered by health care and satisfied with their coverage.³⁴ The demagoguery succeeded in this respect: Although there appears to be no current need for *truly radical* reform, Americans are anxious over the prospect of losing their insurance sometime in the future and are concerned about all the people who are without insurance.³⁵ That, more than anything else, drives the clamor for health insurance reform and provides the impetus for Clinton's proposal.

Obviously, it is in Clinton's interest to maintain a high degree of anxiety among the populace. Indeed, his UNC speech demonstrated that he is quite aware of this fact:

The second element . . . of our personal security must be health care. This is the only advanced nation in which people can lose their health care, where we don't have health care that's always there and that can never be taken away. Even though we spend 40 percent more than any place else in the world, what does that mean?³⁶

So the debate surrounding the issue of health care has evolved to the point where health care is now being touted as a "fundamental right"—comparable to the right to free speech, the right to vote, the right to peaceably assemble, the right to trial by a fair and impartial jury—that all Americans equally share, simply on the basis of being citizens. Of course, there is no mention of a "fundamental right" to health care in the Constitution nor (so far) in federal statute—for now.

This is not a minor, semantical exercise. Once you establish that everyone has a fundamental right to health care, you have opened the legal equivalent of Pandora's box. True fundamental rights are equally possessed by all citizens. All citizens are equally entitled to the exercise of those rights and, only on the basis of a proven compelling state interest, can the government infringe upon or limit such rights. If health care is a fundamental right, then the question arises as to whether the society can justify or tolerate disparate treatment (i.e., differing standards of receipt of health care coverage and benefits) among its citizens.

But the debate has now apparently evolved to the point where the argument is over how best to ensure that everyone enjoys this new "right:" whatever health care one needs. Because we have not heretofore guaranteed this right, we have a crisis.

32. Transcript of First Presidential Debate, *reprinted in* 44 CONG. Q. ALMANAC 91-A, 92-A - 93-A (1988).

33. See *Early Bird '94 Election Report*, ROLL CALL, Nov. 4, 1993, at 26-27.

34. "Paradoxes abound in the polls. People want to dismantle a system they say serves them well Many of those who want to do little or nothing to change the system point to polls showing 80 percent or more of all Americans are satisfied with their current health care benefits and services." David S. Broder and Richard Morin, *The Public Wants a Revolution, Unsure of Which Faction to Join*, WASH. POST, Sept. 12, 1993, at A28.

35. "They worry a great deal about losing the insurance benefits they have and fret about their friends and neighbors who are uninsured." *Id.*

36. UNC Speech, *supra* note 2.

Because we have a crisis, we need legislation. Once we have legislation, government will be empowered to uphold and enforce this right. What will be the state of affairs then?

Under the Clinton plan, a National Health Board will operate regional health planning alliances. It and they will determine what plans will be offered and how many people will be allowed in each plan. It and they will determine what benefits are allowed under these plans. It and they will set the prices and overall budget caps on health care spending at the state and national levels. With limits on outlays will necessarily come limits on treatment—and that means rationing. Who will make the decisions under a rationed system about who receives what kind of care, when and where? Government bureaucrats, of course.

Under the Clinton plan, the National Health Board and the Department of Health and Human Services can take over the health care system of any state they find not in compliance with the legislation and they can impose additional payroll taxes as they see fit.³⁷ What a frighteningly unconstitutional usurpation of Congress' authority to tax! Nevertheless, that is what now looms, and it will be justified as necessary to ensure the "fundamental rights" of American citizens.

Would the founding fathers approve of turning over all of this—fully one-seventh of our domestic economy and truly fundamental individual rights of choice and action—to the federal government? Surely no one could so grossly misinterpret the words of the founders.

Finally, if you have any doubt about the reach for power over the lives of citizens inherent in the Clinton philosophy and program, ponder the health care security card he waved during his speech before Congress. Your health card will have its own "national unique identifier number." Your records will be fed into state-of-the-art electronic data processing networks. The government will know your entire personal health care history: for what you have been treated, with what drugs, for how long, and under whose care. When government knows this much, government knows too much.

Do you feel secure yet?

V. THE REST OF THE CLINTON AGENDA

Another example of the mad pursuit of egalitarian principles at the expense of the liberties of the people is the Clinton economic plan, which included the largest tax increase in history. We have now seen six "deficit-reduction packages" during the last twelve years which contained large tax increases—all promising to reduce our Nation's debt or deficits and all failing!³⁸ Remember when Bill Clinton said during the first presidential debate of the 1992 campaign, "You know, my wife, Hillary, gave me a book a year ago in which the author defined 'insanity' as just doing the same thing over and over again and expecting a different result."³⁹ Well, Mr. President, objective analysis would suggest that tax increases are not the answer.

37. H.R. 3600, 103rd Cong., 2d Sess. §§ 1522-23 (1993).

38. Omnibus Budget Reconciliation Act of 1982, Pub. L. 97-253, 96 Stat. 263 (1982); Omnibus Budget Reconciliation Act of 1984, Pub. L. 98-270, 98 Stat. 157 (1984); Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, 101 Stat. 1330 (1987); Omnibus Budget Reconciliation Act of 1989, Pub. L. 101-239, 103 Stat. 2106 (1989); Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508, 104 Stat. 1388 (1990); Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, 107 Stat. 312 (1993).

39. Transcript of First Presidential Debate, *reprinted in* 48 CONG. Q. ALMANAC 100-A (1992).

Nevertheless, this year's deficit-reduction bill was crafted by Democrats peddling the same seductive—and destructive—philosophy of class envy. In the process, these people have grossly distorted the notion of equality espoused by our founding fathers. Today's notion of equality is strict egalitarianism—not a genuine desire to see all Americans thrive and prosper, but rather a crass and debasing politics of envy which cynically exhorts the “have-nots” to hate the “haves.” By inciting hatred and resentment, instead of admiration and even envy, the Democrats take away from those they purport to represent the desire to achieve and succeed. That desire is replaced with victimization and a yearning to share equally in the achievements and material gains of others. It is no wonder we have a seemingly permanent underclass. What a cruel hoax they have perpetrated!

President Clinton told his audience at UNC that “[w]e want to give people new confidence to dream those great dreams, to take those great risks, to achieve those great things.” Yet, his tax bill has new retroactive marginal tax rates approaching forty percent of income. It has lower thresholds on estate incomes. It caps the deductibility of executive compensation, but fails to set similar limits on the income of fabulously wealthy movie stars and sports athletes. So the same people who constantly deride the loss of the manufacturing sector of our industrial base saw fit to impose harsh and disparate tax treatment upon the wealthy among the corporate strata. Meanwhile, they give tax breaks to Hollywood studio moguls and professional athletic team owners for the millionaire movie stars and athletes who entertain us. Where is the fairness and equity in this? Where is the consistency? What are *their* priorities? No better example exists of what James Madison warned when he wrote in *Federalist* No. 10: “The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice.”⁴⁰

Today the agencies and departments of the government of the United States view themselves as sovereign. No longer is our government the servant of the people. As a result, our government today is thoroughly corrupt; it is corrupted by its dominion over its purported masters and the ability to take whatever actions it pleases—or, as they would claim, are “in the public good”—above the laws which govern the conduct of private citizens. Moreover, government and those who act in its name possess the awesome power to intimidate those who dare to question or challenge them.

If this sounds extreme, consider the following: Secretary of the Interior Bruce Babbitt and EPA Administrator Carol Browner have advocated discarding the individualistic view of property and replacing it with a more communitarian interpretation of property.⁴¹ You might as well discard the Declaration of Independence, the Constitution, and the Bill of Rights.

Merely words? Federal officials today no longer limit themselves to high-blown rhetoric.

On May 13, 1993, in Boise, Idaho, two employees of DeBest Plumbing arrived at a construction site and found a worker from another company trapped in a collapsed

40. THE FEDERALIST NO. 10 (James Madison).

41. See Francis Wilkinson, *Bruce Babbitt: Is He Tough Enough to Save the Environment?*, ROLLING STONE, July 8-22, 1993, at 46, 48; Carl Horowitz, *National Story*, INVESTOR'S BUSINESS DAILY, Oct. 5, 1993, at 1.

trench. The men dug away debris, allowing the trapped man to continue breathing, and bailed water out of the trench until emergency personnel arrived. Over a month after the accident, OSHA fined DeBest Plumbing \$7,825.00. The reason: the two rescuers were not properly trained in *avoiding unsafe conditions*, failed to return to their truck first to retrieve their hard hats, and failed to shore up the collapsing walls before jumping to the rescue.

Idaho Senator Dirk Kempthorne contacted OSHA to inquire about the justification for such action and was told that it was OSHA's preferred strategy to cite everyone for any possible violation and let the appeals process decide the validity. Senator Kempthorne later described this approach as "the 'kill them all and let God sort them out' school of bureaucracy." Although OSHA eventually reversed this idiotic fine, they did so only after intense public scrutiny focused on their ludicrous and petty action.⁴²

There are volumes of such comical stories of regulators run amok. Sadly, however, not all such stories are comical. Indeed, an increasing number of them are tragic and frightening.

We are all familiar with the horrors of the FBI and ATF raid on the Branch Davidian compound in Waco, Texas, in which 86 religious cult members died. Although none of the original justifications for launching the final assault have withstood the test of scrutiny, no additional information has been provided to explain the actions of the government.⁴³ Apparently, none will, as the details of the events leading up to that holocaust have been placed outside the reach of the Freedom of Information Act. We were kept misinformed—and now we are uninformed. It appears that a distinct pattern is developing, and the story does not begin with Waco.

In August 1992, in northern Idaho, ATF agents staged a raid on the property of separatist Randy Weaver. They shot his dog, shot his young son *in the back*, and shot his unarmed wife in the head as she stood in their cabin doorway with her infant daughter in her arms. After an eleven-day standoff, Randy Weaver surrendered. The justification for the raid: In 1989, an undercover federal agent, negotiating a purchase of two shotguns, persuaded Weaver to cut the gun barrels 1/4" short of the 16" legal restriction. Agents later asked Weaver to become an informant, threatening to arrest him on the firearms offense if he refused. He refused, and six months later was indicted.

Weaver was given an incorrect date for a court appearance. When he failed to appear, the siege on Weaver's property began. One U.S. Marshal was killed by a friend of Weaver, and Vicki and Sam Weaver were killed by government officials. Randy Weaver and his friend were charged in the death of the agent, but later acquitted by a federal jury. No charges were filed in the deaths of Weaver's wife and son.⁴⁴ Rough justice.

On March 24, 1993, near Jordan, Montana, Fish and Wildlife agents staged a raid on the ranch of Paul and Rosie Berger, an elderly couple in poor health. The raid was conducted with 17 agents using an airplane, cameras, and all-terrain vehicles. Although the federal agents had decided not to notify the local sheriff's office in ad-

42. Senator Dirk Kempthorne's Press Conference (Aug. 4, 1993).

43. See *The Waco Whitewash*, N.Y. TIMES, Oct. 12, 1993, at 22A.

44. See Jerry Seper, *The Shootout on Ruby Ridge*, WASH. TIMES, Sept. 22, 1993, at A6; Elizabeth Gleick, et al., *Fighting to the Death*, PEOPLE, Sept. 14, 1992, at 57; Neil Modie, *Weaver's Lawyer a Noted Champion of Underdog*, SEATTLE POST-INTELLIGENCER, April 8, 1993, at A1.

vance of the raid, they "allowed CNN to accompany this operation to let them exercise their First Amendment rights." The charges: illegal use of poisons. Even if the Bergers were guilty of poisoning predator animals on their ranch, where were their rights? Why was it necessary for the government to assault the couple's property with such a show of force and violence?⁴⁵ Rough justice.

On October 2, 1992, just before 9:00 a.m., LA sheriff's deputies, federal DEA agents and National Park Service officials raided the Malibu ranch of wealthy, eccentric rancher Donald Scott. They crashed through the front door before it could be answered, forcing Scott's terrified wife through several rooms. Scott, responding to his wife's screams, rushed into the room holding a gun over his head. As Scott lowered the gun in response to demands that he do so, he was shot twice and killed. Agents, claiming they believed Scott was growing marijuana, searched for hours without finding a single marijuana leaf.

Years earlier, Scott had refused to negotiate with federal officials who had expressed an interest in acquiring his land to incorporate it into their scenic corridor. Just before the raid, sheriff's deputies had done an appraisal of the ranch, complete with a marginal notation of a recent nearby comparable sale. What did the value of the ranch have to do with serving a search warrant for marijuana? The Ventura County District Attorney suggested afterward that the real purpose for the raid may have been the government's desire to use forfeiture laws to acquire the Scott ranch.⁴⁶ Rough justice.

This is not a paranoid reaction to isolated, if extreme, incidents. Syndicated columnist Paul Craig Roberts wrote recently, "State and federal asset forfeiture laws have put law enforcement officials into the business of armed robbery."⁴⁷ In a column on federal forfeiture law, Roberts cites more than half a dozen examples of government overreach, including: a home seized because the owners were visited by a friend with a marijuana plant; a rental property owner whose properties were seized because one of his tenants was a drug dealer; a charter Lear jet seized because a passenger was a convicted drug dealer and was carrying cash; and a home seized from a 70-year-old black woman because police "suspected that one of her 16 grandchildren once sold illegal drugs there."⁴⁸

This pattern of abuse of power permeates our government. The government's centralized, bureaucratic decision-making continues to fail us and to assault us. It has created new problems without solving old ones, squandered our national treasury and trampled upon our liberties. Contrary to the claim by President Clinton in the passage quoted at the outset of this article, government under his leadership will not tip the balance of power back in favor of the people; rather, it will continue to tip the balance of power further in the favor of government. Contrary to the President's claim, his government will prevent enterprising citizens from helping themselves.

45. Letter from Ralph O. Morgenweck, Fish and Wildlife Service Regional Director in Denver, Colorado, responding to inquiry by U.S. Senator Conrad Burns (April 22, 1993).

46. See Ron Soble, *A Violent Confrontation Ends Man's Colorful Life*, L.A. TIMES, Oct. 12, 1992, at A3; Daryl Kelley, *Sheriff Clears Deputies in Fatal Raid on Ranch*, L.A. TIMES, Sept. 10, 1993, at B1; Michael Fessier, Jr., *Targeting Donald Scott*, SACRAMENTO BEE, Aug. 8, 1993, at FO-1; John Dillin, *Citizens Caught in the Crossfire*, THE CHRISTIAN SCIENCE MONITOR, Oct. 1, 1993, at 6.

47. Paul Craig Roberts, *The State as a Lawful Banditto?*, WASH. TIMES, Nov. 1, 1993, at A17.

48. *Id.*

VI. REINVENTING GOVERNMENT OR SIMPLY REARRANGING IT?

The release of Vice President Gore's report on "reinventing government" coincided with a clarion call for a fundamental rethinking and restructuring of government. Such an undertaking is certainly long overdue. To its credit, the Vice President's report accurately depicted the level of Americans' dissatisfaction with their government:

Public confidence in the federal government has never been lower. The average American believes we waste 48 cents of every tax dollar. Five of every six want 'fundamental change' in Washington. Only 20 percent of Americans trust the federal government to do the right thing most of the time—down from 76 percent 30 years ago.⁴⁹

The rhetoric from the Administration was once reassuring; they had expressed an earnest desire and explicit intent to make radical and revolutionary changes in government. In his campaign treatise, *Putting People First*, Governor Bill Clinton proclaimed, "It is time to radically change the way government operates—to shift from top-down bureaucracy to entrepreneurial government that empowers citizens and communities to change our country from the bottom up."⁵⁰ In announcing the formation of the National Performance Review which generated the report on "reinventing government," President Bill Clinton declared, "For too long the basic functioning of the government has gone unexamined."⁵¹ He also claimed his Administration intended "to redesign, to reinvent, to reinvigorate the entire national government."⁵²

Regrettably, despite the overwhelming evidence of the need to reconstitute and restructure our government, there were no bold and sweeping reform recommendations in the report. The substance of Vice President Gore's report failed to meet the promise of such grandiose rhetoric. In fact, the Vice President himself quickly dashed any hope for dramatic or substantial change in government's mandate: "The National Performance Review focused primarily on *how* government should work, not on *what* it should do. Our job was to improve performance in areas where policymakers had already decided government should play a role."⁵³

Symptomatic of this problem is Chapter One of REGO, entitled "Cutting Red Tape." The report emphasized that "on the matter of external regulation, a 1993 study concluded that the cost to the private sector of complying with regulations is at least \$430 billion annually—9 percent of our gross domestic product!"⁵⁴ The chapter enumerated "six steps necessary to strip away the red tape that so engulfs our federal employees and frustrates the American people:"⁵⁵

FIRST, we will streamline the budget process, to remove the manifold restrictions that consume [bureaucratic] managers' time and literally force them to waste money.

SECOND, we will decentralize [federal] personnel policy, to give managers

49. ALBERT GORE, CREATING A GOVERNMENT THAT WORKS BETTER AND COSTS LESS: REPORT OF THE NATIONAL PERFORMANCE REVIEW 1 (1993).

50. BILL CLINTON AND AL GORE, PUTTING PEOPLE FIRST 23-24 (1992).

51. GORE, *supra* note 49, at iv.

52. *Id.* at 1.

53. *Id.* at 32 (emphasis in original).

54. *Id.* at 32.

55. *Id.* at 13.

the tools they need to manage effectively—the authority to hire, promote, reward, and fire.

THIRD, we will streamline [federal] procurement, to reduce the enormous waste built into the process we use to buy \$200 billion a year in goods and services.

FOURTH, we will reorient the inspectors general, to shift their focus from punishing those who violate rules and regulations to helping agencies learn to perform better.

FIFTH, we will *eliminate thousands of other regulations that hamstring federal employees, to cut the final Lilliputian ropes on the federal giant.*

FINALLY, we will deregulate state and local governments, to empower them to spend more time meeting customer needs—particularly with their 600 federal grant programs—and less time jumping through bureaucratic hoops.⁵⁶

Not one nickel of that \$430 billion annual cost to the private sector of compliance will be saved through the recommendations of this report—because not one of those six steps address the effect of overregulation on the private sector. These people cannot bring themselves to reduce government's intrusion in our lives in any manner whatsoever! The total focus is on alleviating the regulatory burden upon federal employees and agencies. In a truly bizarre twist, REGO actually calls for cutting "the final Lilliputian ropes on the federal giant"—as if the federal government's power is not awesome and pervasive enough already!

Obviously, the "empowerment" of federal employees is a higher priority with this administration than the "empowerment" of the private sector. Why not cut the "Lilliputian ropes" the federal government has used to "hamstring" American business over the last few decades? Why is the private sector less deserving of regulatory relief than the bureaucrats? The President's promise in his UNC speech "to revitalize the American spirit of enterprise and adventure" rings hollow indeed.

Despite overwhelming evidence that a complete restructuring of our government—and a reduction in its scope and power—is justified and necessary, the report concluded:

In past crises—Watergate or the Vietnam War, for example—Americans doubted their leaders on moral or ideological grounds. They felt their government was deceiving them or failing to represent their values. Today's crisis is different: people simply feel that government doesn't work.⁵⁷

On this score the report is dead wrong. While it is true the American people believe "government doesn't work," they also *DO FEEL* that their government is deceiving them and failing to represent their values. The American people *DO DOUBT* their leaders on moral grounds. Contrary to the premise advanced by the report, today's crisis is much larger and much deeper than simply whether the Postal Service can deliver first class mail in three days, whether the Social Security Administration will answer the phone when you call, and whether you can pay the IRS with your credit card! Nevertheless, that is their vision.

Ironically, in the conclusion, the report quotes Daniel Burnham from 1907: "Make no little plans; they have not magic to stir men's blood, and probably them-

56. *Id.* (emphasis added).

57. *Id.* at 2.

selves will not be realized. Make big plans; aim high in hope and work . . . ”⁵⁸ This administration chose not to aim high. Or, if their aim is high and true, they are deliberately deceiving the people with hollow rhetoric and false promises. Another cruel hoax?

VII. WHAT IS TO BE DONE?

Once we are agreed that we must rethink the role we wish for government to play in our lives—and as the Declaration of Independence emphatically stated, that is *our right*—we must take a systematic approach as to what we want our government to do.

We must first agree on a general philosophy of what function government is to serve in our society. Some would wish for government a very activist role; in which case, they would want to empower it sufficiently so it could be effective when and where it was called upon to act. Having given to government fairly impressive powers, they had better be clear and explicit about the areas in which they wish government to be involved—and those in which they wish to see government excluded! For as we have seen, government cannot long be trusted to stay clear of those areas not originally envisioned to fall within its purview.

I would submit that this is exactly why government ought not be empowered and entrusted to take on myriad tasks and powers. It is quite clear from all that I have personally witnessed and from what others throughout our history experienced that government cannot long—if ever—be relied upon to exercise restraint in its handling of power and protecting our liberties. Therefore, a minimalist role for government—limiting as much as possible the areas in which government is involved and empowered—is imperative. It would likewise seem prudent to adopt an encapsulated view of government’s powers and responsibilities in those areas it is allowed to act—to demarcate strictly and clearly the limitations on its influence and vigor.

That, of course, is precisely what our Founding Fathers attempted to do in Philadelphia in 1787 at the Constitutional Convention. Their experiences with the Articles of Confederation taught them that it was important to enumerate strictly and boldly where government was permitted to act and what powers to provide it in order to carry out its limited mandate.

Obviously, among those areas in which a central government should be entrusted and adequately empowered are providing for the national defense and ensuring domestic tranquility. It must, of necessity, regulate interstate commerce. But far too often the federal government has taken the most expansive view of interstate commerce possible in order to justify its intervention into unrelated matters. The federal government should also be responsible for preserving and protecting our most fundamental rights, instead of expending all its time and energy creating new rights and entitlements. Instead of focusing its attention on the goals it envisions, the federal government constantly micromanages the implementation of these objectives, a task better left to state and local authorities.

What can we, as citizens, do?

First, we must constrain government, to prevent it from abusing its position and power with respect to the people. This does not mean simply “freezing” government in

58. *Id.* at 124.

its tracks or reviewing its responsibilities; there must be a serious effort to downsize the federal bureaucracy through personnel reductions, the reduction of regulatory authority, and the elimination of unnecessary *and unwarranted* federal regulations, programs and agencies.

It cannot be stressed enough that the size of government (both in manpower and resources) must be severely limited. The reason is quite simple. This is not to remove government from its true responsibilities, but rather to force prioritization. The sheer size of government—with more employees than in our entire manufacturing sector—invites redundancy, overkill and misadventure. With limited resources, government may not accomplish all which we would like, but it will rarely have the opportunity to produce harm.

If we are going to severely decrease the resources available to the federal government, we should concomitantly lessen the responsibilities and burdens upon the federal government. To the extent possible, we must shift as much of the remaining burden as possible (and the federal government should view it as a burden!) back to the state and local level. Nothing should be done in Washington, D.C. that can be done elsewhere. Things should be done in the Nation's capital only as a last resort. That is why I am generally opposed to federal mandates—especially those in which the federal government fails to supply the funds necessary for states and localities to fulfill the obligations imposed.⁵⁹

We must renew the traditional notion of property rights. The federal government is so enamored with its power and entangled in our lives, it believes we are only entitled to that which it provides us or generously allows us to keep. That is totally backward. Any government action or regulation which impacts upon the property of an American citizen ought to be handled by the government with the utmost consideration toward keeping that property where it belongs—with the people. If that is not possible, the government should follow strict guidelines to ensure that individuals or groups are adequately compensated when property is adversely affected or expropriated. That is why I have been a strong proponent of the “property rights” legislation originally proposed by my former colleague Senator Steve Symms and now sponsored by Senator Bob Dole.

In that same vein, we must end the government's ability to coerce or compel individuals and groups into acting contrary to their interests or desires simply because they cannot afford to challenge a government with unlimited resources. Once again, government should exist to serve, not to dictate. It should not be financially prohibitive for citizens to assert their rights or contest government actions which infringe upon their rights. Similarly, where government sees fit to use the judicial system to unjustly tyrannize citizens, it should have to pay all legal fees when such action is deemed unfounded.

In the final analysis, we must insist on the public's right to be served, not ruled. We must also make government accountable for its actions, not just accountable to our whims. If all of this is done, then perhaps the Constitution would resume its rightful

59. “[A] centralized administration is fit only to enervate the nations in which it exists, by incessantly diminishing the local spirit,” de Tocqueville remarked, and “authority thus divided [among states and local government] is, indeed, rendered less irresistible and less perilous, but it is not destroyed.” ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 11 (Richard D. Heffner ed., The New American Library 1956) (1838).

place in supporting our freedoms, not confounding them.

VIII. CONCLUSION

There are certain periods in our Nation's history—the New Deal and the Great Society, for example—when pivotal decisions were made regarding the role of government in society. Those decisions had direct and dramatic impact on the lives of Americans and set the course for our Nation for decades to come. Many of the problems we face today arise from decisions made during those periods. We can either address those problems directly or continue to pretend they do not exist.

I believe that we have arrived at another crossroad today. Despite the rhetoric surrounding the so-called Reagan Revolution, I do not believe our society underwent fundamental change. Certainly, the failure to enact more dramatic change during that period was due in large measure to the partisan antagonism between three Republican administrations and a mostly liberal Democratic legislative branch. But it is also due to a Bush Administration which failed to grasp—and therefore continue—the basic premise of the Reagan Revolution.

The announcement by Bush during his inauguration speech—that his Administration would be “kinder, gentler”—was the key: we were not going to see any of the robust release of America's energy that we had seen in previous years.

Worse still, we embark on the course this new President has selected that will vastly increase both the scope of the federal government and the power it wields over our lives. Once that occurs, it may take a true revolution, not just a sagebrush rebellion, to put government back in its proper place. Make no mistake. This government does not seek to serve but to control. We let it at our peril.

Let me conclude by offering one final de Tocqueville quote:

A great many persons at the present day are quite contented with this sort of compromise between administrative despotism and the sovereignty of the people; and they think they have done enough for the protection of individual freedom when they have surrendered it to the power of the nation at large. This does not satisfy me: the nature of him I am to obey signifies less to me than the fact of extorted obedience.⁶⁰

President Clinton, whether through ignorance or deceit, attempted to claim the imprimatur of de Tocqueville's approval for a new and expanded Big Brother government by citing the historian's simple and eloquent observations as though they were his personal conviction. The President would be well-advised to read—and live by—these words of de Tocqueville instead; words which clearly reflect the spirit and conviction of his warnings about unconstrained government and his pleas for vigilance among free people.

This citizen could not agree more.

60. *Id.* at 304.