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THE UNIT OF SOVEREIGNTY

When Napoleon stood before the pyramids and observed that forty centuries were looking down upon him, he essayed the dramatic. Undoubtedly, he was thinking of, and envying, Sesostris and Miltiades, Cyrus and Hannibal. Maybe, there should be included Hammurabi and Moeris, in view of the scholars who accompanied him. Surely the circle should not be made very large, because Napoleon was young then, and he fancied with the extravagance of youth and with youth’s ambition as a soldier.

Those four thousand years, which he personified, are the span of civilization’s history, and the records thereof represent the reservoir of man’s learning. Whether or not the volume of that reservoir has increased from early times, is, must be, an unanswerable question. Whether or not Omar or Attila or the Cumaean sibyl has depleted that reservoir, cannot be said.

Some eulogize the Renaissance; others the Thirteenth Century. Some praise the Cathedrals of the Medieval Period; others the massy structures of today. Some live with Aeschulus and Virgil; others with Dante and Shakespeare. Where shall we place the architects of Babylon, the engineers of Egypt, the philosophers of Greece in this hero-worship? Shall the palm for philanthropic leadership be given to Cyrus or to Marcus Aurelius to St. Louis or to Lincoln? When men of letters feast will Virgil or Shelly, or the author of the Book of Ruth sit in the honored seat? In the ethereal state-house does Aristotle or Thomas Aquinas or Jefferson enter first?

Interesting questions, these—futile, of course. And, yet, it is good for one to think about them, good for one to ruminate and conjecture upon them, even though one’s comprehension be cir-
cumscribed. A recent scholar has taken inventory of the world and declared that his tabulation allows only two thousand great men to have existed. There were included a half dozen contemporaries. Such figures have little meaning, perhaps, but they are one man’s conclusions after a lifetime of study. They do support what is submitted to be a reasonable statement of fact: in forty centuries the quality of man’s civilization has not substantially improved.

What has been the development of the science of government during this time? As Americans, we have smugly decided upon the infallibility of the Revolutionary Fathers and the perfection of our fundamental law. It has not occurred to us to inquire the gestatory period, except to have peremptorily resolved that all ills of former and other peoples were caused by tyrannical monarchies. There is no denying the benefits and blessings derived from our perfect confidence and implicit patriotism. It means complete social happiness.

It should be incumbent upon us, however, as successors to and beneficiaries of such a governmental heritage, to understand its theory and philosophy, its historical derivation, in order that we may have a proper gratitude for its reception, and that we may be fully qualified to protect, to preserve, and intelligently to develop it for our posterity.

The industrial development of the last century demonstrates progress of a nature beyond Archimedes’ wildest dreams; the medical discoveries of Gorgas and Curie would startle Hippocrates. Michael Angelo and Van Dyck reached immeasurably greater artistic heights than the painters of Thebes and Athens. The modern conveyance of intelligence forecloses the opportunity for another Marathon hero such as Phaidippides. How the news was brought from Ghent to Aix will never be sung again (We must not forget, however, to underscore “modern”, for the battle of New Orleans is but a century old, and Rowan, the bearer of Garcia’s message, should be still alive.)

It is not difficult to list interminably constant improvements, at least, changes, with the generations of mankind. To define this growth is the question. Someone has claimed that man’s progress through the ages has been in material, not mental, dev-
elope. If this be but a partial truth, the science of government should be trekking slowly down the path of time.

Man, the philosopher tells us, is by nature a gregarious animal. Theologians explain that God permitted polygamy among His chosen ones, in order that the earth might be peopled, and it follows that His creatures would live together, anyway they did. The irreligious Paine strangely enough remarked that government, like dress, is the badge of lost innocence. When Paradise was lost, and clothing assumed, there appeared with exile, a need for social regulation. Government must have been set down especially in the order of business of the first family reunions, regardless of nationalities.

It should not be surprising, therefore, if we find that the Declaration of Independence paraphrases the philosophy of Aristotle, and that the Amphictyonic fathers had, a thousand years before Christ, discussed principles of government that Jefferson, Madison and Hamilton dwelt upon circa 1776 A. D. This is said in no sacrilegious spirit. The rights of man and the theory of laws have always been of paramount importance; as long as man has had relations with his fellow man. Even the complexities of states and of the federation of states were considerable problems in the Grecian archipelago of early civilization.

Our government, while possessing some framework similar to that of earlier unions, has no identical precedent. Federations such as the Achaian and Hanseatic Leagues were bonds between cities or political units only. They had no covenant running to or for the benefit of a third party—the sine qua non, the citizen. (We know this to be true of the German compact; we cannot be certain about the Grecian arrangement, for the evidences thereof are fragmentary and incomplete. In any event, the indefinite records could not have afforded material benefit.)

Whence these forty-eight states? And why? In so far as the thirteen original colonies are concerned, their union is an accident of history. The word “accident” is used, because the founders of the various states did not harbor any design for ultimate federation. Their respective entities are easily accounted for.

Our earlier history allows some dates and certain salient facts that trace their origin to Europe. First, Columbus in 1492,
discovers America. (That's the name and that's the date I learned in grammar school, and I refuse to change my story.) Second, Italians, Cabot by name, do in an exploratory way for England what a Genoan in the fashion of a discoverer does for Spain. Third, the economic upheaval in the old world caused by the abolition of serfdom, drives millions from the farms into the cities where poverty and unemployment make living conditions horrible; crime is so prevalent that capital punishment for trivial offenses is of small avail. Fourth, Luther and Henry VIII take religion into their own hands, and the subsequent upheaval disturbs to a frightful extent, the spiritual equanimity of all European, and especially English souls.

With this background we can understand the willingness of courageous men to cross a sea filled with monsters, to settle in a land which was comparatively free, (the stock illustration of the purchase of Long Island suffices to make the point) and must have been the home of the brave. The Indian massacres while, perhaps, not unjustified according to the red man’s ethics, were indeed terrible. "The faults of our brother we write upon the sands; his virtues upon the tablets of love and memory." runs the motto of a great benevolent society. A fortiori, filial piety dictates that the question of land titles and other petty incongruities be not even indicted.

Limiting, therefore, our examination to British derivation we find that the colonies were organized under some authority of the Crown. This authority varied with the whims of intemperate rulers, the influence of the moving parties (consider Penn and Calvert) and the condition of the Mother government. Practically all colonization began during a most unsettled time in English history—the seventeenth century—and the violent revolutions and frequent coronations explain satisfactorily a notoriously inconsistent and inefficient method of handling foreign affairs.

It may be of value to consider briefly the nature of the indentures under which these early settlements along the Atlantic seaboard took place. Three different forms of colonial government appear: Charter Colonies, or those operated under a charter from the Crown to the people of the colony, such as Connecticut; Proprietary Government, or those granted to certain
individuals by whom the land was owned, through whom the title of the land was obtained, and by whom governmental privileges therein were dispensed, such as Pennsylvania; and Crown Provinces, orthose ruled directly by the Crown, through the instrumentality of appointed governors, such as New York.

The charters granted by the Crown were the forerunners of the “written” American Constitutions, and one English writer beneficially allows that “if England had done nothing else in history, she might trust for her fame to the work which these charters began”. It is true that these written instruments, in some instances, were fairly correct expressions of a democratic system of government except that the sovereign was the King not the people. In fact, in three states the charter remained the same, save for the designation of the seat of authority, for some years after Independence was declared. Rhode Island simply passed a statute by her legislature in May 1776, substituting allegiance to the colony for allegiance to the King. Connecticut passed the following statute:

"Be it enacted by the Governor and Council and House of Representatives, in general court assembled, that the ancient form of civil government contained in charter from Charles II, King of England, and adopted by the people of this state, shall be, and remain the civil Constitution of the State, under the sole authority of the people thereof, independent of any king or prince whatever; and that this republic is and shall be and remain, a free, sovereign and independent State, by the name of the State of Connecticut."

Immigration to the colonies varied with the times. The Separatists and the Puritans took first to Massachusetts. Religious controversies in the Bay State caused settlements to spring up in Connecticut, where the Fundamental orders, “the oldest truly political constitution in America” were adopted by the residents of Hartford, Windsor and Wethersfield. The intransigent radicals, Williams and Hutchinson, adopted Rhode Island as the home for those of New England who felt and rebelled against the lash of intolerance.

Maryland was a mixed religious and economic enterprise. It also offered a haven to the persecuted and was especially at-
tractive to the Catholics, who numbered among themselves its founder. The Carolinas found especially the French Huguenots seeking refuge within their boundaries. Swedes settled in Delaware and New Jersey, Quakers in Pennsylvania. The Dutch had flourished in New York long before the English arrived. In fact, a Dutch pilot steered the "Mayflower" away from Manhattan to Cape Cod so that his kinsmen would not be annoyed. Georgia attracted a polyglot group: Jews, Highlanders, English convicts. Here John Wesley toiled as a missionary for awhile. Settled at different times, peopled by different nations, actuated through diverse motives, it is not difficult to understand why the original colonies grew into separate and distinct entities, and were proud of their integrity. Wars united them against a common foe, but union was not their desideratum. The Albany Convention of 1754 showed this. The antagonists of the Constitution were as distinguished and as patriotic as its protagonists. Patrick Henry, whom Hamilton would have chosen President, and James Monroe, were anti-federalists. Samuel Adams could not understand the necessity for forsaking the Articles of Confederation. Until the Revolution appeared inevitable, conflicts between England and the colonies individually were not matters of universal concern on this side of the waters. Ancestral pride, unaided progress, hallowed tradition indeed made the first congressional meetings into veritable affairs of nations.

Having this in mind, we can appreciate with what deference the great states of Virginia and New York treated the tiny Commonwealths of Rhode Island and Delaware at Philadelphia in 1787. The equal representation by senatorial ambassadors as provided in the Constitution, was a natural consequence. John Jay was more honored to preside over the Supreme Court of New York, than that of the United States. And the attorney-generalship in Washington's cabinet, nay, even the office of Secretary of State, was not attractive to John Marshall.

The point is made that sound reasons existed for the accentuation of the sovereign rights of the various colonies in 1787. Six years under the Articles of Confederation had magnified local independence and made one suspicious even of his neighbors. If the Constitution breaths tolerance, it was due, not to the virtue of its makers, but to the necessity of the occasion.
The development throughout the 17th and 18th centuries affords ample reasons for the respective boundaries and entities of the American colonies. The relative size and early history of Rhode Island and Delaware find parallels in Switzerland and Andorra. Pennsylvania could distrust New York for essentially the same reasons as France might keep a furtive eye on England. There was no similarity between the customs of Cromwellian New England and of Royalist Virginia. The staunch Dutchmen of Manhattan could have no sympathy for the volatile Huguenot of Charleston. Every reason that might be advanced for the family of nations in Europe was equally applicable in the new world, certain political philosophers to the contrary notwithstanding.

If the Biblical land of Canaan was one of promise, America was one of compromise. If truth be intolerant, there was no truth in 1787. Woodrow Wilson was called a dreamer when he advocated the League of Nations; his plan in 1918 does not seem as impracticable as the Constitution must have appeared to many in the convention at Philadelphia. There need not be set out here those specific compromises that had to be adopted to avoid the irreconcilable clashes of local interest. Above them all must be recognized the fact that the proceedings of the convention were entirely ultra vires. One commentator has said that it was the greatest coup d'état in modern history. This may explain why the Constitution begins with "we, the people"—a palliative to those who might resent the usurped authority.

The federalist papers show that at least some of the fathers had made a study of the early Greek unions. Essays No. XVIII and XIX written jointly by Hamilton and Madison, are devoted to comparison between the American fundamental instrument and some of the Grecian compacts. One difference especially appears. There was no precedent for the delegation of power to the federal government by the people themselves. The Americans were dubious about their rulers and intended to insure themselves against tyranny. Their recent unfavorable experiences with the English King were not forgotten. Any King they would have must be hamstrung. Checks and balances were the prevailing passion. A state would be recognized, and another would be created to watch the first state, lest it exceed its authority.
American liberties would be a picture hung on the wall of stability by two separate wires—one state, the other federal. A brace would be placed between and connect the wires—a supreme court. The federal authority would tend to be centrifugal, the local or state, centripetal. A great scholar uses a better vehicle of comparison. The national government, he says, is a great church erected over more ancient homes of worship. "First the soil is covered by a number of small shrines and chapels, built at different times and in different styles of architecture, each complete in itself. Then, over these and including them all in its spacious fabric, there is reared a new pile with its own loftier roof, its own walls, which may, perhaps, rest on and incorporate the walls of the older shrines, its own internal plan. The identity of the earlier buildings has, however, not been obliterated; and if the later and larger structure were to disappear, a little repair would enable them to keep out wind and weather, and be again what they once were, distinct and separate edifices."

What about new members in the family? The Constitution made provision for the admission of new states upon action of Congress. This was a radical change from the Articles of 1781, which provides that

"Canada acceding to this confederation, and joining in the measures of the united states (sic), shall be admitted into, and entitled to all the advantages of this union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states."

The idea of the consent of nine states was probably taken from the compact of the New England Confederation of 1643, which allowed new colonies to be admitted upon unanimous consent of existing members. Nothing is said about equality of new members under the Covenant of 1787. One would think that Madison’s notes would throw some light on the subject. They are singularly brief. Gouverneur Morris did not feel that Congress should be bound to admit the western states on terms of equality. Colonel Mason observed that if it were possible by just means to prevent emigration to the Western country, it might be a good policy, but go to the people, and the best policy was that which would make them friends, not enemies. Mr. Morris answered that he did not mean to discourage the growth
of the Western country, but he did not wish, however, to throw
the power into their hands. Nothing further came of the mat-
ter. Publius, in Paper XLII, merely notes that the new arrange-
ment is more desirable. This brevity is regrettable. A disser-
tation on the idea of a state would be invaluable for present pur-
poses.

Pursuant to the Constitutional provision mentioned above,
some thirty-five states have been admitted to the Union. Be-
tween 1820 and 1860 the birth of a new state was a momentous
occasion, more important than the election of a president. Slavery
made us circumspect in this regard. The Atlantic seaboard,
Maine and Florida excepted, consisted of a group of independent
sovereignties which had a right to contract for its government.
The thirteen colonies were pedigreed. It was a different story
with the valleys and plateaus of the West. Rhode Island’s mil-
itant commonwealth was entitled to existence. It earned it.
Could the same be said of Iowa? Pennsylvania’s Independence
Hall was disintegrating when Indiana was a wilderness.

Abraham Lincoln maintained in one of his debates that the
Union existed before the states, and it was true that the colonies
associated themselves into a league at the very time at which
they revolted from the British Crown. It is submitted, how-
ever, that the great emancipator never took this position seri-
ously. Article I of the treaty made with Great Britain in 1783,
expressly acknowledges that the thirteen states, naming each of
them, are free, sovereign and independent states. No mention
was made of the “United States”. If Lincoln’s statement be
true, what was the status of North Carolina and Rhode Island
after the acceptance of the Constitution by the other eleven
states? The Confederation had ceased to exist, and they were
not in the new Union for they refused to join for many months.
They must have been independent sovereignties.

While the Confederation was in effect, there was passed on
July 13th, 1787 “An ordinance for the Government of the Ter-
ritory of the United States Northwest of the River Ohio”. Art-
icle V thereof provides:

“There shall be formed in the said territory not less
than three nor more than five states;****And whenever
any of the said states shall have sixty thousand free in-
habitants therein, such states shall be admitted by its dele-
egates, into the Congress of the United States, in all re-
spects whatever; and shall be at liberty to form a per-
manent Constitution and State government:****

Considerable territory was relinquished to the United States
by the treaty of 1783. No state was created out of it or admitted
to the Union prior to the Constitution. Under the new covenant,
a part of section 3, Article IV, gave Congress power to dispose
of and make all needful Rules and Regulations respecting the
territory belonging to the United States. Thus we find, at least,
by implication, that the Union as distinguished from the states
had the right to own that territory, which had been gained by
conquest. Nothing was said, however, about further acquisi-
tion of real estate. In 1803 when Napoleon decided to sell his
holdings in North America, Jefferson was worried about the right
of the United States to acquire the same. He was a strict con-
structionist and consistently honest in his beliefs. Here was an
opportunity which must be accepted without delay. He pro-
posed that the purchase be made and the action be ratified by
constitutional amendment. His scruples were not shared by
others. Louisiana came into our hands, but nothing was done
in the nature of an amendment.

The treaty with France was proclaimed and the grantee of
the great Northwest was the United States. An interesting
clause of the treaty (Art. III) was as follows:

"The inhabitants of the ceded territory shall be incor-
porated in the Union of the United States, and admitted
as soon as possible, according to the principles of the Fed-
eral Constitution, to the enjoyment of all the rights, and
advantages and immunities of citizens of the United
States; and in the meantime they shall be maintained and
protected in the free enjoyment of their liberty, property,
and the religion which they profess."

Did not the President, by and with the advice and consent
of the Senate, undertake something he could not perform? New
states were to be admitted by Congress and the House of Rep-
resentatives would have to be consulted in such cases. The
treaty, of course, was carried out, and sovereign states were
carved out of the vast territory.
Texas was included in the Napoleonic purchase, and in 1819 was traded off to Spain in a deal whereby we obtained Florida by cession. This time a similar agreement covered new states. Article VI of the Spanish treaty says:

"The inhabitants of the territories which His Catholic Majesty cedes to the United States, by this treaty shall be incorporated in the Union of the United States, as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights and immunities of the citizens of the United States."

Mexico, including Texas, later rebelled from Spain. Then Texas renounced her allegiance to Mexico, and was annexed to the United States. After warring with Mexico for two years, a treaty was made, whereby we become owners of substantially all the great western states not heretofore acquired. In this document the word "cede" does not appear, and the evasive language used, excites one's curiosity. At one place, it is remarked, "The boundary line between the two Republics shall be, etc." At another it says "Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, etc." A third clause reads "Considering that a great part of the territories, which, by the present treaty are to be comprehended for the future within the limits of the United States, etc." Apparently Mexico joined in the instrument with some reluctance.

We do not find here the generous expressions concerning statehood that are present in the previous instruments. Article IX of the treaty of Guadaloupe Hidalgo is more indefinite and provides:

"The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the meantime, shall be maintained and protected in the free
enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction."

From the agreement with Russia concerning the cession of Alaska, it appears unlikely that Alaska will become a sovereign state, although nothing is said to the contrary. We find nothing at all concerning possible statehood, or the right to life, liberty, and the pursuit to happiness by the inhabitants of the Hawaiian Islands, in the joint resolution of Congress for their annexation. The treaty of 1898 with Spain cedes to the United States Porto Rico and Philippine Islands, and states that the civil rights and political status of the native inhabitants of those territories shall be determined by Congress. The only security of the inhabitants is in "the free exercise of their religion".

It must not be expected that the various acquisitions cited above were made with indifference on the part of the electorate. Political parties made issues out of each event, and with poetic justice the politicians were often haunted by their deeds. Federalists, monarchic in belief, were reading the strict letter of the Constitution to Jefferson when he bought Louisiana. Southern statesmen who precipitated the annexation of Texas and the war with Mexico in order to maintain the balance of power on the slave question, awoke to find that in acquiring one slave state they had created a situation which made possible a dozen free states. "The best laid plans of mice and men gang aft agley."

At the turn of the century, Mr. Dooley was remarking that the Constitution may not follow the flag, but the Supreme Court kept an eye on the election returns. And the reigning Republican party, in acquiring territory, was following Democratic precedent. This is not surprising. Did not Federalistic New England threaten to secede fifty years before the Democratic South attempted the same thing? Parties have a penchant for stealing thunders.

Among other things we hear said about America on July 4th, is that we are a government of laws and not of men. Theoretically this is true, but in actuality, it is questionable. For instance, it is submitted in the light of logic, that nowhere was it contemplated in the Constitution that territory (other than that already owned) should be acquired out of which new states would appear. Astute lawyers and judges early began a species
of reasoning which resulted in the conclusion that the United States was a sovereignty, and an incident thereof was the right to buy and sell real estate. In the Insular cases 182 U. S. 1. (1901), the Federal Supreme Court discusses the subject, and cites the authority of custom beginning with the French treaty of 1803. Reference is made to the right of the Union to declare war and make treaties, and it follows, of course, (so the Court held) that the Constitution purports to give the Union the right to acquire and own property as a result of the treaty-making power. To stress the implication of the authority, some argued by analogy that, whereas the Articles of Confederation contained (Art. II) the expression "Each state retains every power and jurisdiction not expressly delegated to the United States in Congress assembled", the Constitution merely says (Amendment X). "The powers not granted to the United States are reserved to the States respectively or to the people", omitting the word "expressly". This is reasoning with the use of a micrometer and a slide rule. It is believed that conclusions based on such reasoning could stand without such reasoning.

The Constitution recognizes treaties as the supreme law of the land, treats them as its counterparts of equal dignity and force. It was thought, therefore, that a review of the more important treaties might be of assistance in ascertaining the why and wherefore of the states admitted to the Union since 1787. Did France or the United States insist on Article III of the treaty concerning the Louisiana purchase? The Congressional debates of Jefferson's first term may be illuminating on this subject. It seems hardly probable that Napoleon, engrossed in European difficulties was solicitous about the inhabitants of the Mississippi valley. His Catholic Majesty of Spain could not be worryng to any great extent about the Seminole Indians and the Everglades in 1819. We know that Mexico had little to say to Nicholas P. Trist, American plenipotentiary, in the treaty conference of 1848.

We may conclude that new states were created always for practical reasons. At first, any strength added to the Union was immensely desirable. Then, with the slavery question reaching an acute stage, the South sought perpetuation of the commerce by adding states favorable to the practice. And the North insisted on the principle of an eye for an eye. Jefferson remarked
that the Missouri Compromise startled him like a firebell in the
night. To pass the Fourteenth and Fifteenth Amendments,
states were admitted which would ratify the same. Finally, the
geographical integrity of the country was perfected with the ad-
mission of such states as Oklahoma and Arizona. All except
Texas were created by the Grace of God and the benevolence of
the Federal Congress.

Apparently, no social principle exists demanding that the
thirty-five Constitutionally created states covering a broad ex-
panse of territory be recognized as sovereignties. We know of
no natural reason why the boundaries of these states should be
immutable, their union indissoluble, their existence permanent.
No need for the compromises of 1787 appeared at the time of the
admission of Indiana, or of Nevada, or of South Dakota. A
Senator in 1790 boasting that he was the ambassador of the great
commonwealth of Massachusetts, could do so with pardonable
pride; a Senator in 1920 asserting the same with reference to
Arizona might seem presumptuous.

It may be asserted that a state, once admitted, is bound to
consider neither its questionable ancestry nor its hopeless poster-
ity; that the individuals for whom the governmental structure is
newly created are of substantially the same physical and spirit-
ual content as those who boast of their New England civilization
or Southern culture. Admitting these claims to be true will not
affect the purpose of this paper. Only the superficial nature of
the state as a sovereign entity is questioned herein. A political
pundit has observed that it would take the federal government
longer to destroy forty-eight states and appropriate their func-
tions than, say, twenty. There's the rub, for it is obvious that
the centrifugal principle is becoming stronger than the centri-
petal.

The able Confederate historian, Edward Pollard, said that
there is nothing of political philosophy more plainly taught in
history then the limited value of the Federal principle. He calls
the roll of leagues and compacts, and notes that in every in-
stance that the former governments founded on it (the Federal
principle) had become extinct, or had passed into the alternative
of consolidation or anarchy and disintegration "Indeed," he says.
"it is plain enough that such a form of government is the re-
source of small and weak communities; that it is essentially temporary in its nature; and that it has never been adopted by States which had approached a mature condition and had passed the period of pupilage. It is not to be denied that the Federal principle is valuable in peculiar circumstances and for temporary ends. But it is essentially not permanent; and all attempts to make it so, while marked for certain periods by fictitious prosperity and sudden evidences of material activity and progress, have ultimately resulted in intestine commotions and the extinction of the form of government."

Pollard wrote this when the smoke of the Civil War had not yet lifted and the bitterness of sectional hatred had not been softened with the soothing effect of time. His prejudice must be considered in weighing his credibility as a witness. Let us see if there is any corroborating testimony. The scholarly Bryce, several years later, was discussing the issues between the chief political parties—the Republican and the Democratic. The early distinction was the stand on the question of state's rights. He notes that prior to 1860 the Democrats always viewed the states in the spotlight of importance; the Union in the shadows. It must be remembered that Jefferson wrote the Kentucky, and Madison, the Virginia Resolutions. Jefferson thought the Constitution was a sufficient provision in the matter of foreign affairs. He did not take it to have any important domestic functions. It is not difficult, then, to understand his abhorrence of the decision of the Supreme Court in Marbury v. Madison, and incidentally, of his cousin, Chief Justice Marshall, who wrote the opinion. Bryce states: "The chief practical issues which once divided them (the Democrats and Republicans in 1888) have been settled. Some have not been settled, but as regards these, one or the other party has so departed from its former attitude, that we cannot speak of any conflict of principles." At another place he observes that in the fears of the Haves and the desires of the Have-nots, are found the most frequent ground for political platforms. His conclusion is that the chiefest issue of all, state's rights, was settled by the Civil War. This certainly is not inconsistent with the contention of Pollard. And in 1928 we find that most conservative of conservative Republicans, President Coolidge, lecturing Congress for intervening in matters of state jurisdiction. This seems to be an about-face.
The political texture of all states is substantially Republican. A few Southern states are Democratic but this is due chiefly to the matter of race struggle for supremacy. Their leaders were unanimously in favor of the Eighteenth Amendment. Jefferson's bones must have rattled in wrath if he knew that his so-called disciples were whittling away their state's rights. To be a Republican is not a crime except in some localities below the Mason and Dixon Line. But if the entire country is preponderantly Republican in belief, there is little need for forty-eight separate and independent state legislatures. In making this statement, it is assumed that the republican party favors the centralization of authority. If state's rights be a dead issue, and it seems to be, then a tremendous expense is visited upon the taxpayers in maintaining forty-nine governmental establishments when one will do.

No one will deny a lack of necessity for the indescribable variety of judicial systems about the country. It seems peculiar that one living in South Carolina cannot obtain a divorce upon any ground, while a stone's throw away, across the line separating Georgia, his neighbor has taken to himself and put away three or four wives, all of whom are living. It is difficult to describe a reason why a contract perfectly legal and valid in Chicago, Illinois (a cognovit note, for example) is unenforceable in the suburb of Hammond, Indiana.

Consider the history of corporate enterprises. When popular feeling ran high against the "trusts", the laws concerning artificial entities were as many and as varied as the men who drew them. Surely, it was fortunate for the corporations in those dark hours that they had no body to be lashed or soul to be damned. As the clouds of conscription passed away, some states (notably Delaware and New Jersey) appreciated the tax revenue that might be derived from encouraging corporate development, and radically modified their statutes in the interests of the corporations. When astute promoters were looking for a home in which to lodge the soulless person, the laws of each state were carefully weighed with reference to ultimate personal advantage. Certain states became the more popular choice of incorporators; others not to be out-done, analyzed the cause and amended their laws accordingly. An unthinkable condition arose: sovereignties
were competing with each other to attract business—the business of creating corporations.

A boat trip from Charleston to Boston in 1790 was fraught with more danger and took a longer period of time than a voyage to Europe, today. The bodily punishment inflicted in travelling by stage-coach from Philadelphia to Washington, is almost incomprehensible to one travelling in a luxurious train a thousand miles across the continent, in one seventh the time it took John Adams to go home after a trying session of Congress. We are today closer to China than New York was then to Boston, insofar as the conveyance of intelligence is concerned. A man living during Jefferson’s administration seldom stirred outside his own bailiwick. Today, the avocation of the unrelieved farmer is the maintainance of a tourist camp. There are few country homes where a meal and a bed cannot be obtained for a consideration. This implies automobile travel by millions, and raises the subject of traffic regulations. Until quite recently, one could find within the boundaries of a county, ordinances governing the control of motor vehicles as numerous and as different as the names of the villages located therein. As one sweeps across many state lines in the course of a day, he must worry lest he rest in some village jail at night, because he held out his arm in a manner required in his home state but illegal a hundred and fifty miles away. Violation of a statute is negligence, and one risks his fortune if he has an accident while driving his car in Rhode Island, contrary to her laws, although in Connecticut, where he lives, his conduct is perfectly legal.

The Federal system of courts should not be overlooked. Because of the recognized jealousy between the states, it was thought one commonwealth might judicially discriminate against the citizens of another. To remedy this, where there was a diversity of citizenship, causes were allowed to be removed from state to federal courts. This is still the law. A system of courts is, of course, necessary for the federal scheme of government. Consider, however, the use to which the removal statute is put. Seldom is a removal sought for the Constitutional presumption of local prejudice. Most frequently the question is: which court will adopt the more favorable view of the plaintiff’s (or the defendant’s, as the case may be) position? The Conformity Act
has failed, to a great extent, in its purpose. It provides that
procedure in actions at law in the federal court “shall conform as
near as may be” to that of the state in which the court is estab-
lished. Those words “as near as may be” have been defined, to
steal an Al Smith phrase, in the fashion of Moran and Mack.

In the case of State v. Hall, (114 N. C. 909, 19 S. E. 602) it
appeared that a man stood in North Carolina, shot across the
boundary in Tennessee, and killed a man in the latter state. The
Supreme Court of the State of North Carolina held that Hall
could not be tried and punished in that state because no crime
had been committed in its jurisdiction. The murder, the court
said, occurred in Tennessee. The authorities of the latter state
then sought to extradite the offender, but the North Carolina
court held that he could not be surrendered, since, never having
been in Tennessee, he could not have been a fugitive from the
justice of that state. (State v. Hall, 115 N. C. 811, 20 S. E. 729.)

Business and banking houses doing business on a national
scale must maintain a staff of lawyers to guide their actions in
“foreign” states, because a chattel mortgage at home may turn
out to be a blackmail threat across the river, and what is butter
in Alabama may be only oleomargerine in Mississippi. No pre-
tense is made at a knowledge of the freight rates prescribed
by the Interstate Commerce Commission. Any traffic man can show
you instances, however, where by routing a car the longest way
around, the lowest rate is obtainable, and the cause is found in
the recognition of little black lines on maps which differentiate
Ohio from West Virginia.

The illustrations taken above have been selected at random.
No attempt has been made to be exhaustive or thorough. Enough
have been cited, it is believed, to indicate the tremendous ex-
 pense, burdens and hardships which are visited upon the Amer-
ican people because of the peculiar institution of the American
states as sovereignties. It may be argued that the unprecedented
happiness and prosperity of our citizens warrant no change in
the compact. This does not mean that we should refuse to con-
sider the element of progress, to think out loud, perhaps, on the
evolutionary phase of government. If the thoughts are futile,
appreciation for what we have will be strengthened. If the
ideas are meritorious, they should be digested.
It is true that a republic, and especially a group of little republics, is the most inefficient and extravagant form of government. The citizen prefers the republic at any price. He will concede that a benevolent despotism is the more economic system, but he justly observes that it is impossible to find the benevolent despot. History will bear him out. The Neros and Caligulas have been far more numerous than the Numas and Brutuses. The desideratum is a democracy run as economically and as simply as an absolute monarchy. Can this be accomplished to a large extent by the abolition of the state fiction? Is there not kept in operation a great deal of governmental machinery that is not only obsolete, but also tremendously expensive.

State's rights seemed to be the great issue in the early political struggles, but after all the question of state's rights is only intermediate. No one of the United States is an end in itself. A state is only a means to an end. Other nations may doubt the truth of this statement in the light of their history; America cannot. The record speaks for itself. The Declaration of Independence provides that governments are instituted among men, deriving their just powers from the consent of the governed. Much ink has been consumed, attempting to explain away this statement. The majority in some instances have refused to recognize its truth and disobeyed its injunction—always, however, in a dereliction of duty.

Congress was fully aware of its action when it passed "The Unanimous Declaration of the United States of America" on July 4th, 1776. The committee appointed, on the preceding June 11th, to draft the resolution consisted of Jefferson, John Adams, Franklin, Sherman and Robert R. Livingston, probably the five most notable men then in Congress. Jefferson wrote the instrument, but the others carefully examined it, and made suggestions which in many instances were adopted. The legislators were cautious; they knew their action must meet with the approval of the electorate. Everyone would read searchingly this bold pronouncement. Dulany and Dickinson, Wilson and Franklin had been discussing social theories for years before. The people were prepared intelligently to receive and to understand the American concept of government, and it met with their approval. As successors in trust, we are bound by their acts.
We must distinguish between The Declaration and a Constitution. The former is the soul of our government; the latter, only the body. The former is a recognition of a truth; it is, therefore, immutable. The latter is but a structure in which to house the truth. Structures may become dilapidated, insufficient; repairs should be made when occasion demands.

Our courts confirm this view. In the case of *Sante Fe v. Ellis* (165 U. S. 150) the Federal Supreme Court said:

"The latter (speaking of the Constitution) is but the body of which the former (the Declaration of Independence) is the thought and spirit, and it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence."

And in the case of *Hamilton v. St. Louis* we find this statement by the Supreme Court of Missouri:

"In considering State constitutions we must not commit the mistakes of supposing that because individual rights are guarded and protected by them, they (the rights) must also be considered as owing their origin to them. These instruments measure the powers of the rulers but they do not measure the rights of the governed. What is a constitution and what are its objects? It is easier to tell what it is not, than what it is. It is not the beginning of a community nor the origin of private rights. It is not the fountain of law nor the incipient state of the government; it is not the cause but the consequence of personal and political freedom; it grants no rights to the individual but it is the creature of their power, the instrument of their convenience designed for their protection in the enjoyment of the rights and powers which they enjoyed before the Constitution was made... If (the constitution) presupposes property, personal freedom, a love of political liberty and... (last but not least) enough of cultivated intelligence to know how to guard against the encroachments of tyranny."

It is submitted that the purpose of government is the protection, not the imprisonment of the individual; the preservation, not the destruction of the "unalienable rights" which the Declaration mentions. It was thought that home rule in small areas
was the best agency consistent with the rights of the individual. Hence, the early Republican enunciation of state's rights. It may be, however, that a small polity can become more tyrannical than a great country; that the rights of the individual are subject to more perils in a state of 10,000 square miles than in the United States of 3,000,000 square miles. If this be true, it is the duty of the party which champions the individual to be aware.

The Supreme Court of the United States has mentioned something about the permanency of the states, but this was dictum. Hamilton and Jefferson were both disgusted with the Constitution. The former left the Convention when his plan was disregarded. He urged the ratification of the compact because it was a beginning towards organized government. He thought the structure could be improved upon at a later date. The sage of Monticello was in France in 1787 and was not fully aware of what was going on. He had some correspondence with Madison and others, and was probably responsible for the addition of the Bill of Rights. He did not realize its economic import until some years later. In 1787, however, he wrote that on principle he was for the will of the majority and that if a majority approve of the forthcoming Constitution, "I shall concur in it cheerfully, in hopes that they will amend it whenever they find it works wrong. This reliance cannot deceive us as long as we remain virtuous; and I think we shall be so long as agriculture is our principal object, which will be the case while there remain vacant lands in any part of America. When we get piled upon one another in large cities, as in Europe, we shall become as corrupt as in Europe."

His own private view went far beyond the idea of the state as the self-governing unit; he was for making the smallest political unit self-governing in order to keep the producer alert and interested. He admitted to John Adams in 1813 that his Diffusion of Knowledge Bill had a joker in it for this ulterior purpose by dividing the country into "wards" or towns, and "confiding to them the care of their poor, their roads, police, elections, the nomination of jurors . . . . in short, to have made them little republics with a warden at the head of each, for all those concerns which, being under their eye, they would manage better than the larger republics of the county or state."
Here is evidence of the type of compromise resorted to in numerous instances so that the work of the Convention would not be futile. Here, also, is evidence of the general dissatisfaction of the makers, themselves, with their handiwork. Here, also, is to be found the mandate to posterity to hide not its talent, lest ulterior darkness be its destiny.

The year 1765 was an historic occasion in the House of Burgesses in Virginia. A great parliamentary battle was fought between the tidewater aristocracy led by Peyton Randolph, and the up-country democracy whose spokesman was Patrick Henry. Months afterward, a member of that assembly, Thomas Marshall, returned to his Blue Ridge home and related his experiences to his family. In the circle was his oldest son, John, then a lad of ten years and destined later to be a commanding figure in America. No one in that community yet knew what had gone on in Richmond. None of the modern methods for the conveyance of intelligence were then known. To send information twenty-five miles was a greater task than to flash a news item around the world today. Hamilton spent an impatient two weeks in the City of New York waiting for the messenger who brought him the news that New Hampshire had ratified the Constitution. If the timely dissemination of intelligence were the reason for the small unit (the state) of sovereignty, we may reasonably question the present necessity for the existence of the fiction of the forty-eight states instead of one great sovereignty.

There is no fixed relation between the rights of the individual and the size or population of a state. New York will not admit that her citizens are less free than Nevada's; nor will she contend that her inherent rights are different or greater than those of Nevada. Texas is one hundred times as large as Delaware; California has one hundred times as many square miles as Rhode Island. The quality of democracy in these states is essentially the same. What, then, may be the maximum area and population of a state in which the rights of a citizen as we know them can flourish? A lawyer might answer: it is a question of fact for the jury to decide. If we agree that we cannot answer the question, we admit that the United States might well be a single state, without sovereign sub-divisions.

Some of the advantages to be gained from the change would be: (a) the elimination of the assemblies of forty-eight states and
the cost of maintaining the same; (b) the abolition of one system of courts; (c) the uniform existence and application of laws of a general nature; (d) a fairer distribution of representation in the law-making body.

No effort will be made here to map out this Utopia in detail. It is supposed that the general political unit under such a scheme, would parallel the present congressional district. A bicameral congress could be maintained with the senate made up of members, each representing a group of congressional districts, and the house consisting of a representative from each district.

Nothing is proposed which is at least theoretically inconsistent with the Declaration of Independence. It is to be hoped that there would result a clearer line of demarcation between the state and the individual. If the principle be properly explained, the citizen will more easily grasp the nature of his relation to society, than he does now. He will be more jealous of his own liberties and exercise vigilance in preventing the usurpation of his rights. For years, leading lawyers have urged the adoption of uniform laws by the various states. This is circumstantial proof of the advantage of a single system of laws. During a recent session of Congress, there has been a bill introduced to have the federal courts at law follow rules of procedure promulgated by the Supreme Court. The American Bar Association favors the enactment of such a law. There is no doubt but that Federal Equity Procedure under the regulation of the high court is a better organized system of jurisprudence than we find in federal legal practice.

Another benefit to be derived from a consideration of a fundamental change in the American social structure is the excitation and revival of general interest in government. Andre Siegfried (America Comes of Age) and Oscar Underwood (The Drifting Sands of Party Politics) have noticed in 1927 what was startling to James Bryce forty years ago, namely, that politics is a matter of secondary importance in the United States and public office attracts only second-rate men. This is a natural development in a country where commerce is recognized as first in importance. In the Convention of 1787 and the first congresses the foremost men were present. Hamilton would have succeeded Judge Gary in office, were he living today. Jefferson would probably be in
Owen Young's position. Washington often regretted that public demands on his time forbade his attention to business matters of considerable dimension. Charles A. Beard and wife have observed in their "Rise of American Civilization" that the wealthy are not interested in politics except when their pocket-books are involved. Riches and learning are not necessarily inseparable but leisure affords an opportunity for study, and the man who must work for his living has little leisure.

Interest in bills of rights has lagged. A comparison of state constitutions shows this in a peculiar way. The early colonial constitutions contained as a general rule, little more than a bill of rights. Life, liberty and the pursuit of happiness were not taken for granted as they are today. These rights were important enough to fight for and die for. They were of such magnitude that no subjects of legislative interest were associated with them. As time passed on, the individual seemed to lose his importance; at least, other matters were incorporated in the supreme contract. Some figures may be interesting: Virginia put her first constitution, that of 1776, into four closely printed quarto pages, that is, into about thirty-two hundred words. In 1830, she needed seven pages; in 1850, eighteen pages; in 1870, twenty-two pages, or seventeen thousand words. Texas, in 1876, doubled the length of her constitution adopted in 1845. Pennsylvania was content in 1776 with a document of eight pages, which for those times was a long one; in 1880 she required twenty-three. The Constitution of New Hampshire in 1776 was about six hundred words in length; that of Missouri in 1875 contained more than twenty-six thousand words. The idea of a constitution seems to be lost. People have no conception of the relative importance of laws. The militant apostles of 1776 preaching the gospel of liberty are extinct. A governmental reformation may be timely.

What may we conclude? The reasons pointing to the compact of 1787 are obsolete. Nobody thinks today of his state as his fatherland. Every citizen is patriotic but his love is fundamentally for the United States, for the Stars and Stripes, not for any particular state. America is a dominant figure in the family of nations; California and Pennsylvania and Wisconsin are practically only geographical sub-divisions of America. Why
then persist in maintaining useless state machinery? Local self-government, you say, is the surest way to preserve our right. Are you so sure? What about the Scopes Case and the sterilization laws? By using the dual system of state and federal polities, government is kept complex and beyond the comprehension of the average citizen. The intricacies of governmental machinery, as states now exist and function, try the wisdom of the whole Philadelphia bar.

Would the United States, made into a single state remove the government too far from the people? What happened yesterday in Washington is known throughout the country today. Insofar as informing the people is concerned, Rhode Island was relatively larger in 1800 than the nation in 1928. It is a good thing to have the people apprehensive of the dangers of government. In such case the electorate is more circumspect in choosing its representatives; more alert in examining its laws. With a single congress passing laws for the whole country, we are assured that only general laws of uniformly beneficial application will be enacted. Political log-rolling should disappear when the units of representation are fairly even in population. The great area of the nation, the divers interests of the people, the varied industries throughout the land would prevent the gain of any one section at the expense of the others. If the plan be possible of great dangers, it is also compensated with enormous benefits. The rapidity with which public opinion changes, it is believed, will prevent any evil greater than we find under the present system.

"Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes"—so runs the Declaration of Independence. This does not mean, however, that it is not our duty to consider ways and means in the matter of government, for the author of the Declaration was always fearful lest the people fail to remember that eternal vigilance is the price of liberty. Above all, it is to be kept in mind that we are not here concerned with the purpose but the machinery of government.