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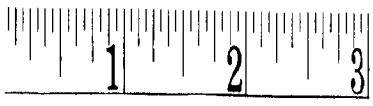

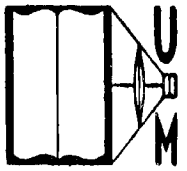

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CENSURE OF MAJORITY RULE

AS A THEME IN AMERICAN LITERATURE

1787-1853

BY

ROBERT GOYER WALKER

A Dissertation
submitted in partial fulfillment of the
requirements for the Degree of Doctor of Philosophy
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CHAPTER I

THE CONCEPT OF MAJORITY RULE

"Although no genuine liberty can exist without being based on popular authority ... it can not exist when thus based, without many restraints on the power of the mass."[1] Thus wrote James Fenimore Cooper in 1838 in The American Democrat. In so doing he succinctly stated what he and his contemporaries considered the peculiar dilemma of democracy: In order for there to be any true individual liberty, sovereignty must rest in the hands of the people, yet this sovereignty cannot be absolute, lest the majority of the people violate individual rights and thus pervert the government. For to Cooper, "individuality" was "... the aim of political liberty."[2] And he found fault with his age chiefly on the grounds that it tended to forget this.

> It is a curious circumstance, that, in endeavouring to secure the popular rights, an effect has been produced in this country totally opposed to this main object. Men have been so long accustomed to see oppression exercised in the name of one, or in the name of a few,

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[1] James Fenimore Cooper, The American Democrat, New York, 1931, pp. 50-51.

[2] Ibid., p. 174.

that they have got to consider the sway of numbers as the only criterion of freedom. Numbers, however, may oppress as well as one or a few, and when such oppression occurs, it is usually of the worst character.[3]

These passages from Cooper clearly illustrate a conflict in democratic doctrine which has vexed American democrats from the founding of the nation to our own day, a conflict which has arisen from two central articles of the democratic faith -- that sovereignty resides in the majority of the people and that each person should be given the maximum liberty of action to develop his individuality. The fear of unrestricted rule by the majority expressed by Cooper has haunted many American political thinkers. "Where the majority are united by a common sentiment and have an opportunity," warned Madison at the Constitutional convention, "the rights of the minor party become insecure."[4] Such a factious majority, once formed, is virtually irresistible, he explained in The Federalist, for it can "... mask its violence under the forms of the constitution," and can sacrifice "both the public good and the rights of other citizens" to its own interest.[5] Alex-

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[3] Ibid.

[4] The Records of the Federal Convention of 1787, ed. Max Farrand, 3 vols., New Haven, 1911, I, 136.

[5] The Federalist, ed. J. C. Hamilton, Philadelphia, 1871, No. X, p. 108. John Stuart Mill questioned the val-

ander Hamilton feared "... the amazing violence and turbulence of the democratic spirit."[6] John Adams was concerned for the property rights of the minority: "When the people, who have no property, feel the power in their hands to determine all questions by a majority, they ever attack those who have property..."[7] John Quincy Adams admitted that the majority had the power but denied that it had the right to do whatever it pleased. Majorities as well as individuals, he asserted, are subject to "the eternal and immutable laws of justice and of morality..."[8]

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idity of the majority principle as it is popularly understood. "Democracy," he said, "is not the ideally best form of government... unless it can be so organized that no class, not even the most numerous, shall be able to reduce all but itself to political insignificance, and direct the course of legislation and administration by its exclusive class interest." Considerations on Representative Government, New York, 1862, chapter VIII, p. 170. Mill's proposals for protecting minority rights and preventing absolute rule by the simple majority of uneducated manual laborers are contained in chapters VII and VIII. One of the dangers which he warns against in his essay On Liberty is the so-called "tyranny of the majority." On Liberty, chapter I.

[6]Farrand, op. cit., I, 289. See also the speeches by Elbridge Gerry, Ibid., I, 48, and Colonel Mason, I, 123.

[7]The Works of John Adams, second President of the United States, ed. Charles Francis Adams, 10 vols., Boston, 1850-1856, VI, 418.

[8]"Publicola," Writings of John Quincy Adams, ed. W. C. Ford, 7 vols., New York, 1913, I, 70.

John C. Calhoun viewed all political activity in a democracy as a series of struggles between opposing parties "... to obtain the majority, -- and, thereby, the control of the government and the advantages it confers."[9] To put an end to this contention and to protect minorities against the discrimination of the majority, Calhoun proposed his device of concurrent majorities. Somewhat later E. L. Godkin pointed out that in a democracy, a form of government in which the poor hold the power because they are in the majority, the property rights of the wealthy are not entirely safe. "If it were not for the restrictions imposed in American States by the Constitution, the lives of rich men and of companies would be full of danger."[10] W. G. Sumner defined democracy as "a theory about sovereignty" which asserts "that the demos ought to rule..." whereas in reality "the first principle of civil liberty is that there is no one who, of right, ought to rule."[11]

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[9] "A Disquisition on Government," The Works of John C. Calhoun, 6 vols., New York, 1854-1857, I, 16.

[10] E. L. Godkin, "The Real Problems of Democracy," in Problems of Modern Democracy, Political and Economic Essays, New York, 1897, pp. 300-301.

[11] W. G. Sumner, Andrew Jackson as a Public Man, What He Was, What Chances He Had, and What He Did With Them, Boston, 1883, p. 224, n.

In a democracy, wrote Sumner, "the majority interest, by numbers seizes the power of the state and proceeds to realize its own interest against all others in the most ruthless fashion."[12] This was already happening in some western states, he warned. An economic-social war inevitably develops in a democracy.[13] In our own day H. L. Mencken has said that democracy wars upon "the free functioning of genuinely superior men," that "... the rule of the majority must tend toward a witless and malignant tyranny, anti-social in its motives and evil almost beyond endurance in its effects."[14] In a strongly anti-New Deal book, Raoul E. Desvernine makes the following statement:

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[12] "Democracy and Plutocracy," in Earth-Hunger and Other Essays, ed. A. G. Keller, New Haven and London, 1913, p. 288.

[13] "Social War in Democracy," Ibid., pp. 316-317.

[14] Introduction to The American Democrat, by James Fenimore Cooper, New York, 1931, xiii. Thomas Carlyle said virtually the same thing in remarking on democracy and its corollary, universal suffrage. It was foolish, he felt, to give the vote to the common man, who was ruled by beer and balderdash. "If of ten men nine are recognisable as fools... how in the name of wonder, will you ever get a ballot box to grind out a wisdom from the votes of these ten men?" Latterday Pamphlets, VI, in Thomas Carlyle's Works, (Ashburton Edition), 17 vols., London, 1893-1895, V, 204. "... can it be proved that, since the beginning of the world," Carlyle asked, "there was ever given a universal vote in favour of the worthiest man or thing? I have always understood that true worth, in any department, was difficult to recognise; that the worthiest, if he appealed to universal suffrage, would have but a poor chance." Ibid., p. 207. See also Past and Present, III, xiii.

> Our Founding Fathers also well knew that although in some aspects of government the majority will should have full expression, nevertheless, freedom demanded certain curbs on the mere power of numbers, to assure individual liberty from the possible tyranny of majorities as well as from the caprices of the sovereign.[15]

The majority-minority problem also appears in a sectional form. Donald Davidson, in making a plea for a healthy sectionalism in American culture, speaks of the south as an exploited minority section. In discussing the causes of the Civil War, he says

> ... the Constitution, although it served admirably as long as parties were roughly national and the division of voters cut across sections, failed when the majority vote concentrated in two sections, and the minority vote in a third section.[16]

Yet many of the early American political thinkers who feared the sovereignty of the majority appealed to the majority principle on certain occasions as a natural, self-evident political principle. One of Madison's objections to equal representation of the states in the Senate was that then "the minority could negative the will of the majority of the people."[17] When arguing against

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[15]Raoul E. Desvernine, Democratic Despotism, New York, 1936, p. 39.

[16]Donald Davidson, The Attack on Leviathan, Chapel Hill, N.C., 1938, p. 32.

[17]Farrand, op. cit., II, 9.

the Articles of Confederation he pointed out the inefficiency of requiring a unanimous vote for the passage of legislation and then asked, "Is it not self-evident that a trifling minority ought not to bind the majority?"[18] Hamilton likewise objected to the requirement of unanimity in the Articles of Confederation. Giving equal votes to Rhode Island and to Massachusetts, he argued, "... contradicts that fundamental maxim of republican government, which requires that the sense of the majority should prevail."[19] At the Virginia convention of 1788, Edmund Randolph urged a unanimous ratification of the Federal Constitution in accord with the will of the majority of the delegates, for, he argued, "... let the contest be what it may the minority should submit to the majority."[20] In 1798 John Marshall wrote, "the best rule for freemen... in the opinion of our ancestors, was... that... of obedience to laws enacted by a majority of the people's representatives."[21]

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[18] The Debates in the Several State Conventions on the Adoption of the Federal Constitution... ed. J. Elliot, 5 vols., Philadelphia, 1861, III, 89.

[19] The Federalist, XXII, p. 187.

[20] Elliot, Debates, III, 596.

[21] Albert J. Beveridge, The Life of John Marshall, 4 vols., Boston and New York, 1916-1919, II, 402.

It is understandable that these men should have so referred to the naturalness of majority rule, for the majority principle had long been a major article of the American democratic faith. In 1717 John Wise, one of the more liberal New England divines, considered it an essential constituent of democratic government. One of the necessary conditions of popular government, he said, was "That when the Assembly be Orderly met, as to time and Place, that then the Vote of the Majority must pass for the Vote of the whole Body."[22] In the Virginia Bill of Rights of 1776, the justice of the majority principle was assumed as self-evident. Sovereignty resided in the majority of the people:

> ... government is, or ought to be instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration... when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable and indefeasible right to reform, alter or abolish it, in such manner as shall be judged most conducive to the public weal.[23]

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[22] Vindication of the Government of New England Churches, in The Puritans, ed. Perry Miller and T. H. Johnson, New York, 1938, p. 267.

[23] Sources and Documents illustrating the American Revolution 1764-1788 and the formation of the Federal Constitution, ed. S. E. Morison, Oxford, 1929, p. 149. The

Americans, therefore, considered majority rule a self-evident principle and an essential element of democracy. But a long line of political thinkers, among them Aristotle,[24] Hobbes, [25] and Locke,[26] assumed that it was a natural principle of other forms of government also.

Democracy has for ages been defined as rule by the mass or the majority of the people. Herodotus identifies democracy with rule by the multitude.[27] Plato defines it as government by the poor, in other words by the mass of the people.[28] According to Aristotle, a state

> ... is a democracy when those who are free are in the majority and have sovereignty over the government, and an oligarchy when the rich and more well born are few and sovereign.[29]

Modern political thinkers have tended to agree with the ancient. Alexis de Tocqueville states that "the very es-

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fifth article of the Pennsylvania Declaration of Rights is identical with this, the third of the Virginia Declaration, Ibid., p. 164.

[24] Politics, IV, iii, 3.

[25] Leviathan, Chapter XVIII, sections 1, 3.

[26] Two Treatises of Government, II, 95-99.

[27] Herodotus, III, 80-82.

[28] The Republic, VIII, 557.

[29] Aristotle, The Politics, tr. H. Rackam, London and New York, 1932, IV, iii, p. 293.

sence of democratic government consists in the absolute sovereignty of the majority..."[30] James Bryce uses the word "democracy" to denote

> ... a government in which the will of the majority of qualified citizens rules, taking the qualified citizens to constitute the great bulk of the inhabitants, say, roughly, at least three-fourths, so that the physical force of the citizens coincides (broadly speaking) with their voting power.[31]

Carl Becker points out that

> Modern democracy has accepted one article of the Jeffersonian philosophy -- that government rests upon the consent of the governed; and this article, in the form of the right of the majority to rule, it has even erected into an article of faith.[32]

Edward S. Corwin defines "the democratic dogma" as "... the doctrine that the people should rule."[33]

The paradoxical attitude of Americans toward this major article of their political faith, the concurrent

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[30] Democracy in America, tr. H. Reeve, ed. J. C. Spencer, New York, 1839, 2 vols., I, 250.

[31] James Bryce, Modern Democracies, 2 vols., New York, 1921, I, 22.

[32] Carl Becker, The Declaration of Independence, A Study in the History of Political Ideas, New York, 1922, p. 234.

[33] Edward S. Corwin, "The Democratic Dogma and the Future of Political Science," The American Political Science Review, XXIII, No. 3, (August, 1929), p. 571.

questioning and affirming of the validity of the majority principle, the perennial disagreement as to its meaning and application pose a complex problem for the political scientist. And it has been recognized. Some years ago Walter Lippmann expressed regret that no attempts had been made to clarify the theory of the majority principle, to show where and when it applies. It was time, he felt, "... to reconsider the premises of the democratic faith."[34] For it seemed obvious to him that as popularly understood, "... the dogma of majority rule contains within it some sort of deep and destructive confusion."[35] Recently there has been a livelier interest shown in the majority principle. Max Lerner in It Is Later Than You Think has emphatically asserted that "... democracy means majority rule,"[36] and that "... the political job of our time must be the heroic effort of making our society as safe as possible for the majority principle."[37] But he admits that "the relation of majority rule to minority rights

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[34]"Why Should the Majority Rule?", Harper's Magazine, CLII (March, 1926), 400.

[35]Ibid., p. 401.

[36]Max Lerner, It is Later Than You Think, The Need for a Militant Democracy, New York, 1938, p. 98.

[37]Ibid., p. 111.

raises some knotty problems in the No-Man's Land where the two areas meet and blur..."[38] One such problem he presents in a chapter on majorities and minorities: "Majority rule tends to grow imperialistically until it makes the culture totalitarian; but minority rights tend to be fetishized into minority rule."[39]

Willmoore Kendall, writing in The Southern Review, agrees with Lerner that majority rule is essential to democracy. He defines the majority principle as the doctrine

> ... that in any decision-making group one half of the members plus one, have a "right" to commit one half of the members, minus one, to any policy they see fit to support... that those members of a decision-making group who are opposed to the policy of the majority ought to submit to that policy until such time as they can make themselves a majority.[40]

This is the kind of political principle that can be neither proved nor disproved, Kendall points out; its adherents claim that it is self-evident, or in argument they assume that it is true and beg the question of its valid-

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[38] Ibid., p. 98.

[39] Ibid., p. 118.

[40] "The Majority Principle and the Scientific Elite," The Southern Review, IV (Winter, 1939), 463-465.

ity. Therefore, says Kendall, its history should be written in order that we may understand how men came to believe it.[41] An understanding of this idea is important because it is fundamental to democracy but especially because

> American political theory, from the Federalist Papers to the day before yesterday, appears... as a nostalgic yearning after a definition of "democracy" that will somehow circumvent the implications of the majority principle.[42]

Since any such definition that really excludes the majority principle identifies democracy with some sort of minority rule, and since all men agree that minority rule is not democratic, "... the sort of definition our political theorists have sought can be achieved only by chicanery."[43]

A lucid exposition of one phase of this "chicanery" by which Americans have sought to "circumvent the implications of the majority principle" is presented by Edwin Mims, Jr., in The Majority of the People, the best study to date of the majority principle in America. Militantly

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[41] As a contribution to the history of this idea, Mr. Kendall has recently published a study of Locke's theories on the subject, John Locke and the Doctrine of Majority Rule, Urbana, Ill. (University of Illinois Press), 1941. Illinois Studies in the Social Sciences, XXVI, No. 2.

[42] Kendall, op. cit., p. 468.

[43] Ibid.

democratic and pro-majority,[44] this book explains how the constitution has been used to throw dust in the eyes of democrats, how judicial review has been made an effective means of blocking the majority will. According to Mims, this frustration of democracy has been made possible by a false notion of sovereignty, by the sanctification of the Constitution, by the apotheosis of the Supreme Court, and by giving it the exclusive privilege of interpreting the Constitution and thus of defining the limits of legislative and executive power. An undemocratic concept of sovereignty, promoted by such men as Hamilton,[45] Webster and Taney,[46] has gradually taken the place of the true democratic version, according to which the people always possess the "constituent power,"[47] the power of setting up, altering, and abolishing forms of government. This specious theory of sovereignty gives the constituent power only to the generation which originally established the government, not to subsequent generations. This original majority which set up the government is endowed with

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[44] Edwin Mims, Jr., The Majority of the People, New York, 1941, pp. 11-12. This book is an invaluable bibliographical aid for the study of the majority principle.

[45] Ibid., pp. 35-36, 55-56, 63-80.

[46] Ibid., pp. 36-43.

[47] Ibid., pp. 30-36.

an "artificial eternity,"[48] with the power to bind all succeeding generations, who can change the government only with the permission of the existing government. This is the old Hobbesian doctrine of governmental sovereignty, Mims explains;[49] it is the complete antithesis of the theory expounded by Rousseau[50] and Jefferson, the theory on which the American Revolution was based,[51] the democratic theory of popular sovereignty, according to which the people never surrender their "constituent power." When the theory of governmental sovereignty became prevalent in America, when Webster and Taney's identification of the "people" of 1787 who "limited themselves" with the "people" of all succeeding eras was generally accepted, when the Constitution came to be revered as the Ark of the Covenant, when fianlly a conservative supreme court began handing down decisions limiting the powers of Congress, then were the people indeed thwarted in carrying out their will.

The problem of sovereignty raised by Mims can be understood more clearly, perhaps, by contrasting the

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[48] Ibid., p. 22.

[49] Ibid., pp. 17-22.

[50] Ibid., pp. 23-28.

[51] Ibid., pp. 29-34.

views of two men who were widely read in America -- Burke and Paine. Burke's Reflections on the Revolution in France was universally admired by the Federalists and Paine's Rights of Man as universally reviled; whereas Paine's work was a handbook among the Jeffersonians. The issue of governmental or popular sovereignty was one of the central issues of the controversy between these two antagonists. In presenting the conservative theory of government as an evolving social organism, Burke denies that "... we have acquired a right... 'to choose our own governors... to cashier them for misconduct... to frame a government for ourselves.'"[52] The true principles of the Revolution of 1688 are to be found in the Declaration of Right,

> An act for declaring the rights and liberties of the subject, and for settling the succession of the crown. ... these rights and this succession are declared in one body, and bound indissolubly together.[53]

Indeed, insists Burke,

> So far is it from being true, that we acquired a right by the Revolution to elect our kings, that if we had possessed it before, the English nation did at that time

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[52] Burke's Reflections on the Revolution in France, ed. F. G. Selby, London, 1890, p. 17.

[53] Ibid., p. 18.

most solemnly renounce and abdicate it, for themselves and their posterity for ever.[54]

English liberties are thus "an entailed inheritance."[55] These remarks perfectly express the theory of governmental sovereignty and the "artificial eternity" attributed to the acts of the generation which sets up a constitution. Paine answered Burke's assertions in his Rights of Man. The English Parliament, Paine admits, had a right to bind themselves and their constituents; but they had no right to bind posterity for ever -- a ridiculous and impudent assumption of authority.

> There never did, there never will, and there never can, exist a Parliament, or any description of men, or any generation of men, in any country, possessed of the right or the power of binding and controuling posterity to the "end of time," or of commanding for ever how the world shall be governed, or who shall govern it; and therefore all such clauses, acts or declarations by which the makers of them attempt to do what they have neither the right nor the power to do, nor the power to execute, are in themselves null and void. Every age and generation must be as free to act for itself in all cases as the age and generations which preceded it. The vanity and presumption of governing beyond the grave is the most ridiculous and insolent of all tyrannies.[56]

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[54] Ibid., p. 21.

[55] Ibid., p. 36.

[56] Rights of Man, in The Writings of Thomas Paine, ed. M. D. Conway, 4 vols., New York and London, 1894-1896, II, 277-278. Paine states the same argument in his "Dissertation on First Principles of Government," Writings, III, 261-264.

The issues of governmental or popular sovereignty, of majority or minority rule, of the eternity of ancestral decrees or legislation by the living have been of first importance throughout American history, whether in 1787 at the founding of the nation, in 1857 in the Dred Scott decision, or in 1937 during the wrangle over the reorganization of the Supreme Court. At the height of this controversy Dorothy Thompson summed up the conservative arguments in a pamphlet, The Essentials of Democracy, in which she warned that majority rule, carried to its logical conclusion, means revolution.

> ... we must be warned against an argument which tells us that to substitute the will of the majority for the will of the people is not a revolution at all. The substitution of unchecked majority rule for constitutional government means radical change in our governmental system, and in our governmental theory.[57]

The Senate Judiciary Committee in its report on the proposed reorganization bill made use of all the traditional American constitutional formulae. It identified the people of 1937 with those of 1787-1788.

> But if you say the process of reform by amendment is difficult and uncertain, the answer is, the people made it so when they framed the Constitution.[58]

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[57] Quoted by Mims, op. cit., pp. 45-46.

[58] The New York Times, June 15, 1937, 18:7. Quoted by Mims, op. cit., p. 47.

The committee insisted that one of the chief functions of the Supreme Court is to protect minorities and individuals against the majority: "Our law reports are filled with decisions ... restraining majorities..."[59] It is more important, furthermore, that individual and minority rights be protected, that our balanced government of separated powers be preserved, that the Constitution endure, than that the will of the majority should prevail. The United States Constitution was established

> ... for the protection of the people, for the preservation of the rights of the individual, for the maintenance of the liberties of minorities... That is the American system. It is immeasurably more important, immeasurably more sacred to the people of America, indeed, to the people of all the world, than the immediate adoption of any legislation, however beneficial.[60]

The problem of reconciling individual rights and the sovereignty of the majority is, then, a timeless one in American politics. It was the same in 1937 as it was in 1787. Fenimore Cooper's paradox enunciated in 1838, that individual liberty cannot exist without popular sovereignty and without at the same time "... many restraints on the power of the mass," still vexes American democracy. The relation of majority rule to minority rights is,

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[59] The New York Times, June 15, 1937, 19:5.

[60] Ibid., 18:5. Quoted by Mims, op. cit., p. 2.

therefore, a fruitful subject of study, not only in political thought but in literature also. For to question the majority principle is to strike at the foundation of democracy. But even if the majority principle were not still a live issue, the doubts and qualifications of it expressed in literature would be worth while investigating purely as an interesting phase of American literary history, as a study of the relationship between literature and politics in American culture. Criticism of majority rule in American literature is frequent, extensive, voluminous. Many major and minor American men of letters touch on the problem; a few, such as Cooper and Orestes Brownson, treat it in detail. Among those in whose works it appears explicitly or implicitly are Hugh Henry Brackenridge, Washington Irving, Joseph Dennie, John Pendleton Kennedy, Edgar Allan Poe, Ralph Waldo Emerson, and Henry David Thoreau.

This dissertation proposes, therefore, to study the adverse criticisms of the majority principle as they appeared in American literature before the Civil War. It will begin with the Constitutional convention because this was the first reaction after the Revolution to the attempts to practice the democratic theory enunciated in the Declaration of Independence. It will study Federalist political theory as a necessary background for an understanding of later criticisms of majority rule and their expression in litera-

ture. It will of course include the conservative reaction to the Jeffersonian victory in 1800. It will end before the Civil War because by the eighteen-fifties Americans were less concerned with the power of the demos than with sectional conflicts and because by that time America had settled down after the popular revolution led by Jackson which inspired so much criticism of majority rule. This study will attempt to relate political thought, historical events, and literature, to set forth and interpret the various manifestations, ramifications and transformations of American criticism of the majority principle. In the course of this investigation, historical events, political works, and speeches at constitutional conventions will be discussed as a background essential to understanding the literary treatment of the majority principle. The focus of this dissertation will fall principally on literature, with historical events and political theory so treated as to provide a background for clarification and illumination of the reactions and responses of the literary mind to the problems raised by the principle of majority rule. In endeavoring to lay bare the interrelations of American literature and politics, several questions will be investigated.

1. What forms did anti-majority criticism take; or, what were the alleged evil results of unchecked majority rule?

2. What were the proposals to prevent these evil results? In other words, how was the majority principle to be circumvented?

3. Why did men profess faith in the majority principle and at the same time fear its application?

4. Whence arose the "nostalgic yearning" of Americans to "circumvent the implications of the majority principle?"

5. How did the literary mind respond to the majority-minority problem? In what forms did the men of letters express their motives, arguments, and proposed restraints on the majority?

CHAPTER II

CRITICISM OF MAJORITY RULE BY THE FEDERALISTS

That there was a great deal of economic confusion and distress, of conflict between groups with opposed interests during the seventeen-eighties has long been a commonplace of American history. This has been an established fact since the first attempts were made to write the history of the post-Revolutionary period. John Marshall in his Life of Washington is a witness to these conditions and to the economic origins of the political strife of the times.

> The discontents and uneasiness, arising in a great measure from the embarrassments in which a considerable number of individuals were involved, continued to become more extensive. At length, two great parties were formed in every state, which were distinctly marked, and which pursued distinct objects ... .
>
> The one struggled with unabated zeal for the exact observance of public and private engagements. By those belonging to it, the faith of a nation, or of a private man was deemed a sacred pledge, the violation of which was ... forbidden ... by moral justice ... and sound policy. The distresses of individuals were, they thought, to be alleviated only by industry and frugality, not by a relaxation of the laws, or by a sacrifice of the rights of others. According to the stern principles laid down for their government, the imprudent and idle could not be protected by the legislature from the consequences of their indiscretion ... .[1]

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[1] John Marshall, The Life of George Washington, 5 vols., Philadelphia, 1805-1807, V, 85.

The men of this party, Marshall tells us, were in favor of a uniform enforcement of the laws of justice and an increase in the powers of the federal government. The other party, however, followed a different course:

> Viewing with extreme tenderness the case of the debtor, their efforts were unceasingly directed to his relief. To exact a faithful compliance with contracts was, in their opinion, a measure too harsh to be insisted on, and was one which the people would not bear. They were uniformly in favour of relaxing the administration of justice, of affording facilities for the payment of debts ... . In many of the states, this party ... constituted a decided majority of the people.[2]

This party opposed a strong centralized government. Charles Francis Adams in his Life of John Adams tells us that the economic conflicts, the unrest and rebellion of the poor class at this time made possible the adoption of the Constitution. The sudden change to democratic government, according to Adams, made the people impatient of the restraints of law and order.

> It was the upheaving of the poorest classes to throw off all law of debtor and creditor, which brought about the successful effort to reorganize the federal government anew, as a bridle upon their license. They never favored it beforehand, nor cordially approved it afterwards... The federal convention was the work of the commercial people in the seaport towns, of the planters of slaveholding States, of the officers of the revolutionary army, and the property holders everywhere. And these parties could never have been strong enough of themselves ... had it not been that the open insurrection in Massachu-

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[2] Ibid.

setts, and the assemblages threatening to shut up the courts of justice in other States, had thrown the intermediate body of quiet citizens of every shade of opinion, in panic, all on their side.[3]

Later historians agree with Marshall and Adams. O. G. Libby finds that most of the opposition to the Constitution occurred in the interior, frontier districts, which were agricultural and had interests opposed to those of the urban districts. Here the debtor class outnumbered the creditor, here taxes and legal restraints were detested and paper money and tender laws demanded of the legislature.[4] "... the Anti-Federal stronghold in 1788 was the Shays stronghold in 1786, as well as the center of the paper money and debt agitation ..."[5] In support of these assertions, Libby quotes Madison's letter of February 3, 1788 to Washington, in which he tells Washington of the parties opposed to ratification of the Constitution in Massachusetts.

There are, unhappily, three parties opposed to it «sic» First: All men who are in favor of paper money and tender laws. Those are more or less in every part of

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[3]The Works of John Adams, ed. C. F. Adams, I, 441.

[4]O. G. Libby, The Geographical Distribution of the Vote of the Thirteen States on the Federal Constitution, 1787-8, Madison, Wis., 1894, p. 69.

[5]Ibid., p. 57.

the state. Second: All the late insurgents and their abettors. In the three great western counties they are very numerous. We have in the convention eighteen or twenty who were actually in Shays' army.[6]

McLaughlin states that demands for issues of paper money were general throughout the states in 1785-86 as a result of the economic depression following the war.[7] He attributes Shays' Rebellion to the depression, to the scarcity of specie, and to the unrest engendered in the lower classes by the Revolution.[8] According to Channing, the economic disorders within the states - exemplified by the debtors' riots in Massachusetts - were one of the causes of the aroused public opinion which made possible the adoption of the Constitution.[9]

More recent historians are in substantial agreement with these earlier analyses of the economics and politics of the middle seventeen-eighties. Morison asserts that in nearly all of the thirteen states there was a "distinct class division between merchants and farmers, or (in the

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[6] Ibid., p. 13.

[7] A. C. McLaughlin, The Confederation and the Constitution, 1783-1789. (The American Nation: A History, vol. X) N. Y. and London, 1905, chap. IX.

[8] Ibid., Ch. X.

[9] Edward Channing, A History of the United States, 6 vols., New York, 1905-25, III, 481-87.

South) planters and farmers ..."[10] The distress of the farmers was most severe in Massachusetts. "The commercial interests, having rigged the State Constitution, had succeeded in shifting the weight of taxation on to land and polls."[11] The farmers were entirely lacking in political power. Beard agrees that the burden of taxes fell heaviest on the poorer people, "just as private citizens started a flood of law suits to collect debts."[12] According to Beard, this economic struggle was not a new one: "... the financial, creditor, commercial, and speculating classes in the confederate republic were harassed ... just as such classes had been harassed ... on the eve of the Revolution."[13] A fuller analysis of the economic forces back of the political struggle in the seventeen-eighties is to be found in Beard's other principal works on the period.[14]

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[10] S. E. Morison, The Oxford History of the United States, 1783-1917, 2 vols., Oxford, 1927, I, 78.

[11] Ibid., p. 79.

[12] Charles A. and Mary R. Beard, The Rise of American Civilization, 2 vols., New York, 1927, I, 307.

[13] Ibid., p. 306.

[14] Economic Origins of Jeffersonian Democracy, New York, 1915, Chap. I; An Economic Interpretation of the Constitution of the United States. New York, 1913, Chapters II, III, IV.

Warren, however, raises his voice in protest against Beard's sharp division of the American people under the Confederation into debtor and creditor, agrarian and commercial classes. "The lines of the picture," he says, "are altogether too neat."[15] He denies that America was divided into creditor and debtor classes which respectively supported and opposed the Constitution, and asserts that most Americans were simple, middle class men, neither creditor nor debtor. Such economic classes as existed were divided within themselves on the subject of the proposed Constitution. "... if the picture is to be drawn of a division of the American people on economic lines," Warren concludes, "the lines would cross and recross and break and twist and curve, so as to render the line of division unrecognizable."[16]

It is not necessary or desirable for the purposes of this dissertation to rely upon any facile, oversimplified division of the American people into economic classes. Nor is this dissertation concerned with the proof or refutation of the Beard thesis as to the economic inter-

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[15] Charles Warren, The Making of the Constitution, Boston, 1929, p. 72.

[16] Ibid., p. 78.

ests of those who supported and opposed the Constitution. Any controversy between Warren and Beard is outside its scope. But this study will assume that the consensus of historical opinion is trustworthy and is based on fact. And the undeniable facts which this consensus has established are, at present, that there were severe economic problems centering around debts and money just after the Revolution, that these problems caused an economic struggle which found expression in a political struggle, that there was a relatively poor and a relatively wealthy class, and that there were debtors and creditors. Contemporary documents show that economic problems and opposed economic interests were in everyone's mind. The writings of Madison and Marshall quoted above reveal that conflicting economic interests were often associated with the wrangle over ratification of the Constitution. Hamilton is another contemporary witness to the importance of economic forces in framing and ratifying the Constitution. He lists the circumstances favoring its ratification thus:

> A very great weight of influence of the persons who framed it, particularly ... the universal popularity of General Washington. The good-will of the commercial interest throughout the States, which will give all its efforts to the establishment of a government capable of regulating, protecting, and extending the commerce of the Union. The good-will of most men of property in the several States,

who wish a government of the Union able to protect them against domestic violence, and the depredations which the democratic spirit is apt to make on property, and who are besides anxious for the respectability of the nation. The hopes of the creditors of the United States, that a general government possessing the means of doing it, will pay the debt of the Union. A strong belief in the people at large of the insufficiency of the present Confederation to preserve the existence of the Union, and of the necessity of the Union to their safety and prosperity ... .[17]

Hamilton lists the forces working for the defeat of the proposed Constitution thus:

... the disinclination of the people to taxes, and of course to a strong government; the opposition of all men much in debt, who will not wish to see a government established, one object of which is to restrain the means of cheating creditors; the democratical jealousy of the people, which may be alarmed at the appearance of institutions that may seem calculated to place the power of the community in few hands, and to raise a few individuals to stations of great pre-eminence ... .[18]

Though Warren's thesis is that the Constitution was framed and ratified out of "... patriotic desire for a united Nation, able to take its place with the other Nations of the world," though he thinks that economic forces were unimportant in making the Constitution, he nevertheless reveals the economic stresses and strains of the day when he enumerates the evils which brought about

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[17] The Works of Alexander Hamilton, ed. H. C. Lodge, 12 vols., New York, 1903, I, 420-21.

[18] Ibid., p. 422.

the convening of the delegates in 1787. These evils resulted from the impotence of the national government under the confederation, but also from

> ... State legislation unjust to citizens and productive of dissensions with neighboring States - the State laws particularly complained of being those staying processes of the Courts, making property a tender in payment of debts, issuing paper money, interfering with foreclosures of mortgages ... interfering with private concerns, imposing commercial restrictions on goods and citizens of other States.[19]

In his first chapter, entitled "Fears of Disunion," Warren tells how the divergent interests of states and of sections composed of several states caused many men of the day to despair of ever forming a permanent union. So Warren himself admits that economic problems and conflicts existed and that Americans of the times were fully conscious of them, whatever the class divisions existing then may have been, even though the lines of class division did "cross and recross and break and twist and curve."

Whether these economic classes blended imperceptibly into each other or were characterized by sharp, distinct lines of demarcation is not our concern here. What is our concern is the interpretation of the criticisms of the

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[19]Warren, op. cit., pp. 5-6.

majority principle which occurred at this time. We shall proceed to this interpretation from the established facts of the existence of economic distress and conflict during the period of the Confederation and of contemporary Americans' consciousness of these economic problems.

II

All of the major political criticisms of the majority principle and the conflicts which they reflect are to be found in the Constitutional Convention. These criticisms can be divided into two main classes, those arising from sectional conflict and those arising from class conflict or from the fear of class conflict.

The sectional conflict was first manifested in the controversy between the delegates of the large and small states over the apportionment of representatives among the states. Were the states to be equally represented in the new national government as they had been in the past, or were they to be represented in proportion to their population? Madison first raised this question on May 30, when he moved that a more "equitable ratio of representation ought to be substituted" in the new government for the

equality which had existed under the Articles of Confederation.[20] But Reed of Delaware immediately objected that the delegates from his state were forbidden by their "commission from assenting to any change of the rule of suffrage."[21] Thus did the large and small states first cross swords in the duel for political power which almost brought the convention to a stalemate and prevented any agreement being made. However, the delegates eventually reached a compromise on this issue by consenting to a bicameral legislature, with equal representation for each state in the senate and representation in proportion to population in the house.

The real bone of contention in this debate was representation in the senate. The small states agreed that proportional representation in the house was just, but steadfastly refused to agree to it in the senate. They feared that without the check of equal representation in one house, their economic interests would be infringed by the numerical majority of the large states.[22] Brearly of

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[20] The Records of the Federal Convention of 1787, ed. Max Farrand, I, 36.

[21] Ibid., p. 37.

[22] Cf. the speeches of Patterson of New Jersey, Farrand, op. cit., I, 178-79, 551, 554; Bedford of Delaware, Ibid., 167; Sherman of Connecticut, Ibid., 196, 201.

New Jersey went so far as to assert that he would sooner consent to a redivision of the states into thirteen equal parts than to a proportional representation in both branches of the legislature.[23] For such an assignment of representatives would inevitably result in the domination of the smaller states by a few large ones.

In arguing thus for an equal representation in the senate, the spokesmen for the small states denied by implication one of the fundamental articles of the democratic creed -- the majority principle. Madison, who represented Virginia, a large state, understood this and met their demands for equal votes with several objections:

> 1. the minority could negative the will of the majority of the people. 2. they could extort measures by making them a condition of their assent to other measures. 3. they could obtrude measures on the majority by virtue of the peculiar powers which would be vested in the Senate. 4. the evil instead of being cured by time, would increase with every new State that should be admitted, as they must all be admitted on the principle of equality.[24]

Thus Madison asserted by implication his faith in the justice of rule by the numerical majority. How he hung back from the logical consequences of this faith will be shown later.

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[23] Farrand, op. cit., I, 177.

[24] Farrand, II, p. 9.

Wilson of Pennsylvania opposed equal votes for states in the Senate on the same grounds as Madison. He was willing to let the small states withdraw from the government rather than compromise on this point. In his opinion the question amounted to this: should

> ... less than 1/4 of the U. States withdraw themselves from the Union, or shall more than 3/4 renounce the inherent, indisputable, and unalienable rights of men, in favor of the artificial systems of States.[25]

That a proportional representation had been settled on for the first branch of the legislature did not make this equality in the second, demanded by the small states, any more palatable to him. "Such an equality will enable the minority to controul ... the sentiments and interests of the majority. Seven states will controul six ... ."[26] No man in the convention had a stronger, more ardent faith in the majority principle than did James Wilson - nor a more sincere and consistent one.

Ellsworth of Connecticut, the most articulate exponent of the rights of the small states, answered Wilson. It was not at all true, he said, that the minority would rule the majority. There would simply be a very salutary and desirable check on the power of the majority.

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[25] Ibid., I, 482.

[26] Ibid.

> The power is given to the few to save them from being destroyed by the many. If an equality of votes had been given to them in both branches, the objection might have weight. Is it a novel thing that the few should have a check on the many. Is it not the case in the British Constitution ... ? Have not the House of Lords, who form so small a proportion of the nation a negative on the laws, as a necessary defence of their peculiar rights against the encroachments of the Commons. ... No salutary measure has been lost for want of a majority of the States to favor it. If security be all that the great states wish for the first branch secures them. The danger of combinations among them is not imaginary. ... Suppose that in pursuance of some commercial treaty or arrangement, three or four free ports and no more were to be established would not combinations be formed in favor of Boston, Philadelphia & some port in Chesapeak? A like concert might be formed in the appointment of the great officers.[27]

The above passage indicates that this heated debate on proportional or equal representation for states did not arise from a mere academic faith in political principles or from a desire to insure protection against possible future discrimination, but rather from actual conditions and incidents of the times, from the economic depression and the confusion of conflicting state fiscal policies.[28] The denial of the majority principle by the small states in the debate on representation was strongly motivated by fear of the economic consequences to them if they lost their equality in voting power.

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[27]Farrand, I, 484-485.

[28]Cf. Edmund Randolph's complaint that the Confederation was impotent to prevent "inefficiency of requisitions ... commercial discord among the states," Farrand, I, 18;

A more important sectional conflict than this was the opposition between the north and the south. Madison understood that it was the fundamental political conflict in America, that there was no real danger to American unity from the temporary differences of the small and large states. "The institution of slavery and its consequences..." were the causes of the political rivalry between these larger geographical sections.[29]

> The great danger to our general government is the great southern and northern interests of the continent, being opposed to each other. Look to the votes in congress, and most of them stand divided by the geography of the country, not according to the size of the states.[30]

Hamilton, speaking in the New York ratifying convention, gave a similar analysis of the economic divisions of the nation:

> ... the natural situation of this country seems to divide its interests into different classes. There are navigating and non-navigating states. The Northern are

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Hamilton's accusation that the small states, in particular Rhode Island, had abused their power under the Confederation, Ibid., p. 479; the admissions by Gorham (Ibid., p. 462), Madison (Ibid., II, 306), and Wilson (Ibid., II, p. 307) of economic rivalry and discrimination between the states.

[29] Farrand, II, 10.

[30] Ibid., I, 476.

properly navigating states: the Southern appear to possess neither the means nor the spirit of navigation.[31]

This being the case, these differences between the north and south appeared in the Convention, as we should expect. And also as we should expect, they involved considerable discussion of the majority principle. Colonel Mason of Virginia spoke for the entire southern delegation when he expressed his fear that the south, being a minority, would suffer at the hands of the northern majority, since "a majority when interested will oppress the minority."[32] The southerners feared that they might be injured by several adverse measures which the northern majority might possibly employ. Foremost among these was a tax on exports - a worry which they had in common with the

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[31] Debates in the Several State Conventions on the Adoption of the Federal Constitution, ed. J. Elliot, 5 vols., Philadelphia, 1861, II, 235-36.

Butler of South Carolina and King of Massachusetts agreed wholly with Madison and Hamilton that the interests of the north and south were opposed. Farrand, II, 451; I, 566.

Charles Warren tells of the seriousness of the conflicts between the larger sections of the country at this time. During the three years immediately before the movement to form a new government, the opinion was often expressed "that the commercial and political interests and conditions of the Southern, Middle, and Eastern States were so divergent that they could be dealt with, fairly and justly, only by a separation ... ." Warren, op. cit., p. 24.

[32] Farrand, II, 362, 451. Williamson of North Carolina objected that a proposed plan of representation would

small states. Such a tax would have raised the price of southern tobacco, rice, and indigo in the world market, would have reduced the trade of the south and drained off much of the wealth of the southern states into the national treasury.[33] The result of the insistence of the southern delegates on this point was the insertion of a clause in the Constitution specifically forbidding a tax on exports. Another possibility which gave some southerners concern was that the northern, commercial states, making use of the power granted the new government to regulate commerce, would pass an oppressive tariff law, or would gain a monopoly of the carrying trade by ship subsidies and navigation laws discriminating against the vessels of foreign countries. To avoid this, Charles Pinckney proposed that no law regulating foreign or inter-state commerce should be passed "without the assent of two thirds of the members of each House."[34]

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give the northern states "... a majority in the first instance and the means of perpetuating it." Farrand, I, 567.

[33] Cf. Charles Cotesworth Pinckney's statements of the peculiar economic interests of the south, Farrand, I, 510, 592.

[34] Farrand, II, 449. In support of his amendment, Pinckney expounded the diverse economic interests of the various sections of the country. His proposal was favored by Mason, Williamson, and Edmund Randolph (Farrand, II,

Fully as compelling a motive as either of the above in the southerners' demand for protection against the northern majority was fear for their peculiar economic and social institution, slavery. The three southernmost states, North Carolina, South Carolina, and Georgia, were particularly anxious to secure the institution by forbidding Congress to emancipate the slaves and by assuring an adequate supply of negroes from Africa. The slave trade must continue. Rutledge, Williamson, and Baldwin were emphatic about this. Their states would never ratify the new Constitution if they were forbidden to import slaves.[35] General Pinckney expounded the economic advantage of slavery to the south, and Charles Pinckney pointed

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452), but was opposed by such southerners as Madison, General Charles C. Pinckney, and Rutledge, who agreed with the contention of Gorham and Gouverneur Morris that the power to regulate commerce was too important to weaken with the requirement of a two thirds majority.

The economic antagonism between the northern commercial, carrying states and the southern agricultural, producing states was recognised also in the state ratifying conventions. Grayson, speaking in the Virginia Convention said: "The interest of the carrying states is strikingly different from that of the productive states. ... The carrying states will assuredly unite, and our situation will be then wretched indeed. ... Republics ... oppress more than monarchies." Elliot, Debates, III, 282. Davie spoke in the North Carolina Convention of "the commercial jealousy between the Eastern and Southern States... ." Ibid., IV, 42-43.

[35]Farrand, II, 372-373.

out that it was essential to the southern economy.[36] Mason of Virginia, however, opposed the continuation of the slave trade, calling it an "infernal traffic" originating in "the avarice of the British merchants... . Every master of slaves is a born petty tyrant," he said.[37] Luther Martin bitterly denounced the proposed clause to permit the importation of slaves; "it was inconsistent with the principles of the revolution and dishonorable to the American character to have such a feature in the Constitution."[38]

But though such Virginians as Mason, Madison, and Randolph deplored the existence of such an evil institution as slavery, they were nevertheless willing to make use of it to increase the political power of the south and protect it against the northern majority. For slavery was a means by which the south could increase its representation in Congress and thus be stronger in the fight against tariffs, navigation laws, and anti-slavery laws. Delegates from the deep south such as General Pinckney, Charles Pinckney, and Butler demanded that the slaves be counted equally with

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[36] Ibid., pp. 370, 364. cf. also Elliot, Debates, IV, 295. In the South Carolina convention, Lowndes expressed fear that the northern majority would abolish slavery. Ibid., p. 272.

[37] Farrand, II, 370. But Mason opposed total abolition and criticised the new Constitution in the Virginia Convention because there was no clause protecting the south's slaves against a northern majority. Elliot, Debates, III, 269-70.

[38] Farrand, II, 364.

whites in determining the number of representatives which the southern states should have in the house, since the slaves were not only a species of wealth, but were also human beings. But most of the southern delegates argued only for a ratio of representation according to which five blacks would be counted as three whites.[39] After much objection by the northern delegates,[40] this ratio of representation was finally agreed upon. Thus by counting three fifths of the slaves in determining representation, the south gained an appreciable number of representatives.

As the northern delegates claimed, the southern plea for representation of the slaves was a drive for political power and security.[41] Like the small states, the southern

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[39] Cf. the speeches of Mason and Randolph, Farrand, I, 581, 594.

[40] Cf. Gouverneur Morris, Farrand, I, 604; Luther Martin, Ibid., II, 364. Morris objected that the measure was inconsistent, since the slaves were treated neither completely as human beings nor as property, and asserted that "the admission of slaves into the Representation ... comes to this: that the inhabitant of Georgia and S.C. who goes to the Coast of Africa, and tears away his fellow creatures from their dearest connections ... shall have more votes in a Govt. instituted for protection of the rights of mankind, than the Citizen of Pa. or N. Jersey who views with a laudable horror, so nefarious a practice." Farrand, II, 222.

[41] William Davie, a delegate to the federal convention from North Carolina, in pleading for ratification of the new Constitution in his state convention, explained the strategy of the south on economic grounds: "It became our

states were anxious to protect themselves from the economic aggression of an interested majority. And their increased number of representatives as a result of the five to three ratio made them much abler to ward off such calamities to their economy as a tax on exports, an emancipation law, a law forbidding the slave trade.

The political and economic conflicts between the north and south and between the large and small states were both of the horizontal type, that is, they did not involve social classes, but only adjacent geographical sections within the United States. Much of the criticism of majority rule which arose during the debates as a result of these intersectional conflicts was merely implied, but whether it was implied or openly stated, it amounted to this: that an interested majority would always oppress the minority, that the North and the large states were interested majorities, and that there ought to be some check on such a

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duty ... to acquire as much weight as possible in the legislation of the Union; and, as the Northern States were more populous in whites, this only could be done by insisting that a certain proportion of our slaves should make a part of the computed population." Farrand, III, 342.

General Pinckney, speaking to the South Carolina ratifying convention, expressed his pleasure at the liberal terms which the south had exacted from the north and said that the southern delegates would have made better terms if they had been able; but on the whole, he did not "think them bad." Elliot, Debates, IV, 283, 286.

majority, some protection for the interests of the minority. Both the small and the southern states feared that the majority would work its will to their detriment; hence they felt it was unjust, and they would not submit to it. In the Federal and the State conventions there was only a practical opposition to the power of sectional majorities. There was no elaborate explanation as to why the majority will should not be allowed to work and as to how it should be checked, such as occurred later in Calhoun's Disquisition on Government.

III

But by far the most frequent and voluminous criticism of the majority principle to be found in the Constitutional Convention is not that arising from sectional conflicts, but that arising from class conflict within sections. For at this time the sectional antagonism which later resulted in the Civil War was in a state of gestation. It was not sectional rivalry, but the conflict of class interests revealed in the pro-debtor, paper money agitation so prevalent in many states that produced the questions of the hour and frightened the conservative class.

The signs of this fright were many at the Constitutional Convention. They appear all through the records, on nearly every day. Hardly a delegate would have disagreed with Elbridge Gerry of Massachusetts that

> The evils we experience flow from excess of democracy. The people do not want virtue; but are the dupes of pretended patriots. (originally demagogues). In Massts. it has been fully confirmed by experience that they are daily misled into the most baneful measures and opinions by the false reports circulated by designing men, and which no one on the spot can refute.[42]

Gerry and the other delegates used the term "democracy" in its etymological sense, meaning by it the rule of the masses, or at times even mob rule. Thus the word, lacking its present ethical content, had definite invidious connotations to them. Also, the word "democracy" was to them practically synonymous with rule by the simple majority, by which they meant a majority of the entire population governing through a single legislative body. Hence Gerry could speak of democracy as "the worst ... of all political evils,"[43] for

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[42]Farrand, I, 48. The anti-democratic sentiments of the framers of our federal Constitution have long been the stock-in-trade of historians and political scientists. e.g., James Bryce has said that "no men were less revolutionary in spirit than the heroes of the American Revolution. They made a revolution in the name of Magna Charta and the Bill of Rights: they were penetrated by a sense of the dangers incident to democracy." The American Commonwealth, 2 vols., second edition revised, London and New York, 1891, II, 259.

[43]Farrand, II, 647.

he believed that the people were incapable of choosing either legislators or executives to govern themselves.[44] Their ignorance would allow them to be misled by demagogues, "by a few designing men."[45] Another grave evil of democracy in his opinion was the violation of minority rights by the majority which it promoted and condoned; for the "majority will generally violate justice when they have an interest in so doing."[46] Colonel Mason concurred with Gerry. The chief evils of republican government, he believed, were "the danger of the majority oppressing the minority and the mischievous influence of demagogues."[47]

By far the fullest and ablest exposition at the convention of the dangers of majority rule was made by Madison. Whenever a majority is united by a common interest, he said, the rights of the minority -- whether religious,

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[44] Ibid., I, 132.

[45] Ibid., II, 57.

[46] Farrand, I, 123.

[47] Ibid., II, 273. Washington agreed with Gerry on the people's inability to govern themselves. Writing to Henry Lee in October, 1786, he said of the uprisings in Massachusetts, "They exhibit a melancholy proof of what our transatlantic foe has predicted; and of another thing perhaps, which is still more to be regretted, and is yet more unaccountable, that mankind, when left to themselves, are unfit for their own government." The Writings of George Washington, ed. W. C. Ford, 14 vols., New York, 1889-1893, XI, pp. 76-77.

political, or economic -- are jeopardized. But Madison was not greatly concerned about the infringement of religious rights by majorities. He was much more interested in economic rights, especially property rights, for his political theories had an economic foundation. All civilized societies, he believed, tend to be divided into various factions according to economic interests -- the rich and the poor, the debtors and creditors, the landed and manufacturing interests. The oppression of the minority by the majority, which occurs throughout history, had already appeared in America:

> What has been the source of those unjust laws complained of among ourselves? Has it not been the real or supposed interest of the major number? Debtors have defrauded their creditors. The landed interest has borne hard on the mercantile interest. ... The lesson we are to draw ... is that where a majority are united by a common sentiment and have an opportunity, the rights of the minor party become insecure.[48]

Madison did not view the majority-minority problem merely as a question of his own day. He looked into the future when the conditions which were at its root would be aggravated and the likelihood of injustice increased by extremes of wealth and poverty:

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[48]Farrand, I, 135-136.

> In framing a system which we wish to last for ages, we shd. not lose sight of the changes which ages will produce. An increase of population will of necessity increase the proportion of those who will labour 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 law 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 sufficiently appeared in a certain quarters «sic» to give notice of the future danger.[49]

Granting that there was danger to property to be anticipated from equal and universal suffrage, what did the authors of the Constitution propose to do to avert it? They generally admitted, with or without regrets, that the popular election of one branch of Congress at least was absolutely necessary.[50] So it was necessary to check the popular will. One simple way to accomplish this which was within the grasp of the states was to federate and thus form one government of a broad elective and geographical scope, Madison pointed out. For the larger the sphere of a republican government, the greater the diversity of interests and parties; consequently the probability of a majority having interests hostile to those

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[49] Ibid., 422-23.

[50] Cf. Gerry, who wanted the election to be as indirect as possible, Farrand, I, 132; James Wilson, Ibid.; Mason, Madison, and Dickenson, Farrand, I, 134, 48-51.

of the whole or of the minority was less, and so was its ability to unite in pursuit of them in case it did have such interests.[51]

Madison gave this theory a fuller exposition later in The Federalist, where he explained the superiority of a large republic to a small democracy. It is possible to enlarge the scope of a republic indefinitely, he said, but not of a democracy. For

> ... in a democracy, the people meet and exercise the government in person, in a republic, they assemble and administer it by their representatives and agents.[52]

By a democracy, then, Madison meant a direct popular government, by a republic, an indirect, representative, popular government. The people were sovereign in both types.

But in a democracy, since it covered such a small area, it was impossible to prevent interested or "factious" majorities from uniting to injure the minority. Whereas in a republic such coalitions were more easily controlled because of the greater number of people and the refinement of public opinion by representative govern-

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[51]Farrand, I, 136.

[52]The Federalist, ed. J. C. Hamilton, Philadelphia, 1871, XIV, p. 132.

ment.[53] By a faction Madison meant any group of citizens

> ... whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.[54]

Factions, Madison continued, are unavoidable in society. Their causes, "sown in the nature of man," can not be removed.[55] They arise from religious, economic, even from imaginary distinctions. Economic factions are inevitable when man is left at liberty:

> The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to an 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 society into different interests and parties.[56]

The foundations of government, therefore, are economic. "Those who hold, and those who are without property, have ever formed distinct interests in society."[57] The end of

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[53] The Federalist, X, pp. 109-111.

[54] Ibid., p. 105.

[55] Ibid., p. 106.

[56] Ibid.

[57] Ibid., p. 107.

government is to protect the right to gain and hold property and also to regulate the struggle between such "various and interfering" property interests as the landed and commercial, the debtor and creditor.[58]

This economic strife appears in the legislative bodies of republics because those who will profit from the laws which are passed make the laws. And of course, of the various parties which compose the legislature, "the most numerous ... the most powerful faction, must be expected to prevail." Such a factious majority is virtually irresistible, for it can "mask its violence under the forms of the constitution," and can sacrifice to its own interest "both the public good and the rights of other citizens" Therefore all possible means should be taken to prevent its ever forming. "For if the impulse and the opportunity coincide ... neither moral nor religious motives can be relied on as adequate control."[59]

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[58] Ibid.

[59] Ibid., p. 108. Speaking in the Virginia ratifying convention Madison warned the delegates that the "turbulence, violence, and abuse of power, by the majority trampling on the rights of the minority, have produced factions and commotions, which, in republics, have more frequently than any other cause, produced despotism." Elliot, Debates, III, 87.

In the fifty-first number of The Federalist Hamilton repeated the ideas first presented by Madison in the tenth number: the necessity of guarding individual and minority

Other devices than this extension of the scope of government were proposed in the Constitutional convention for the purpose of preventing the formation of a majority composed of "interested coalitions." One such device was a senate, "... a body ... sufficiently respectable for its wisdom and virtue to aid ... the preponderance of justice by throwing its weight into that scale."[60] The terms of office proposed for the members of this stabilizing body varied from four to nine years,[61] for since it was intended to control the democratic branch of the legislature, the delegates felt that it should be more permanent and less subject to the popular will than the democratic branch.

The most reactionary critic of majority rule at the convention, Alexander Hamilton, also advocated a senate as one of the most effective means of checking the turbulent and constantly changing popular will. He wished to check the majority because of his admitted distrust of republican government,[62] a distrust arising from his pessi-

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rights against the encroachments of the majority, and the effectiveness of an enlarged sphere of government in accomplishing this. The Federalist, LI, pp. 400-402.

[60] Farrand, I, 423.

[61] Wilson and Madison proposed a nine year term, Farrand, I, 218, 424-426; Spaight and Randolph a seven year term, Ibid., 218; Gerry a four or five year term, Ibid., 424.

[62] Farrand, I, 424.

mistic view of human nature. It was a great mistake, he told the convention, to assume that men were honest. "Take mankind as they are, and what are they governed by? Their passions." And their "prevailing passions are ambition and interest."[63] Believing that men were motivated by these two dominant passions, the lust for power and the lust for wealth, Hamilton, like Madison, saw an inevitable and endless economic struggle in all history as well as in his own age. Like Madison also, he believed that an inequality of property distribution would exist "as long as liberty existed, ... would unavoidably result from ... liberty itself."[64] Therefore in order to protect property rights, Hamilton included a property qualification for the electors of senators in his plan for a new government. The original draft of his plan, containing this provision, was not presented to the convention. In it the senate was to be chosen by electors elected by citizens who had in their wives' or own right "... an estate in land for not less than life, or a term of years, whereof at the time of giving votes there shall be at least fourteen years unexpired."[65]

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[63] Farrand, I, 381.

[64] Ibid., p. 424. Cf. also p. 432.

[65] Works, I, 352-353. Cf. also Farrand, I, 291. In The Federalist Hamilton explained that a senate was needed

Hamilton preferred that the senate be elected for life or good behavior, though he realized the hopelessness of including such a provision in the Constitution. He proposed this in the famous speech which he made at the convention praising the British Constitution and House of Lords.

> In every community where industry is encouraged, there will be debtors and creditors, etc. Give all power to the many, they will oppress the few. Give all power to the few, they will oppress the many. Both, therefore, ought to have the power, that each may defend itself against the other. To the want of this check we owe our paper-money-instalment laws, &c. To the proper adjustment of it the British owe the excellence of their Constitution. Their House of Lords is a most noble institution. Having nothing to hope for by a change, and a sufficient interest, by means of their property, they form a permanent barrier against every pernicious innovation whether attempted on the part of the Crown or of the Commons. No temporary Senate will have firmness enough to answer the purpose. ... Gentlemen ... suppose seven years a sufficient period to give the Senate an adequate firmness, from not duly considering the amazing violence and turbulence of the democratic spirit.[66]

Certainly these utterances of Madison and Hamilton, the most outspoken critics of majority rule among the founding fathers, suggest that when they sought to thwart

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because of "the propensity of all single and numerous assemblies, to yield to the impulse of ... passions, and to be seduced by factious leaders into intemperate and pernicious resolutions." LXII, 469.

[66] Farrand, I, 288-89. Cf. also I, p. 299. In the New York ratifying convention Hamilton emphasized the need of a permanent senate to check the democratic spirit. Elliot, Debates, II, 302, 317.

the popular will, they considered not only future eventualities but also had contemporary incidents -- especially the debtor riots of Shays -- freshly in mind.

So did others at the convention who considered a senate essential to the protection of property from the mob.[67] Mason, for example, pointed out that it was important that the senators should really have the interests at heart which they were supposed to protect. A longer term than six years would be futile "if needy persons were elected."[68] He therefore suggested attaching a property qualification to the office. When a committee of detail was to be appointed, Mason moved "that the Committee ... be

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[67]Morris wanted an "aristocratic body" elected "for life," Farrand, I, 512.

[68]Farrand, I, 428. Like the other delegates, Washington was alarmed over the danger to property under popular government. Writing to Madison about Shays' rebellion in Massachusetts, he quoted a letter from General Knox, which was "... replete with melancholy accounts of the temper and designs of a considerable part of that people. 'Their creed is, that the property of the United States has been protected from the confiscation of Britain by the joint exertions of all; and therefore ought to be the common property of all; and he that attempts opposition to this creed. is an enemy to equity and justice, and ought to be swept from off the earth.' ... How melancholy is the reflection, that in so short a space we should have made such large strides towards fulfilling the predictions of our transatlantic foes! 'Leave them to themselves, and their government will soon dissolve.' Will not the wise and good strive hard to avert this evil?" Letter to Madison, Nov. 5, 1786. Writings, ed. W. C. Ford, XI, 81-82.

instructed to receive a clause requiring certain qualifications of landed property & citizenship ... in members of the legislature."[69] This motion appeared in the report of the Committee of Detail as Section 2 of Article VI:

> The Legislature of the United States shall have authority to establish such uniform qualifications of the members of each House, with regard to property, as to the said Legislature shall seem expedient.[70]

When this section came up for debate, Charles Pinckney proposed that the members of both houses be required to swear that they were in possession of a certain amount of property.[71] Rutledge supported him, but Ellsworth opposed a uniform or fixed property qualification, not because it was undemocratic, but because circumstances varied so that he thought it best to leave the decision up to the state legislatures. Franklin, however, opposed the provision on principle as undemocratic. "Some of the greatest rogues he

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[69]Farrand, II, 121. This precipitated a mild debate over the propriety of recognizing only landed property in granting suffrage. King of Massachusetts objected to Mason's motion because "it would exclude the monied interest." Ibid. Madison reminded Mason that "landed possessions were no certain evidence of real wealth. Many enjoyed them to a great extent who were more in debt than they were worth. The unjust laws of the States had proceeded more from this class of men, than any other." Such a provision would not only give no protection; "it would exclude the proper representatives of those classes of Citizens who were not landholders." Ibid. Madison wished to check the backwoods, debtor farmers.

[70]Farrand, II, 179.

[71]Ibid., p. 248.

he was ever acquainted with were the richest rogues."[72] Pinckney's motion was defeated, and after Madison had shown that allowing the legislature to fix the qualifications of its own members might result in an aristocracy, the whole section was struck out.[73] Nevertheless the incident reveals the sentiment which existed in favor of a property qualification for membership both in the Senate and in the House.[74]

How was this senate to be chosen in order that it might act as a check on the majority? Madison insisted that the election of senators should be indirect, should be removed at least one degree from the people, for in states where the senate was chosen in the same manner and for the same term of office as the house it "was found to be no check whatever... ."[75] Most delegates agreed with Madison. Many went much farther. Morris and Reed wanted the senate to be appointed by the executive.[76] Hamilton

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[72] Ibid., p. 249.

[73] Farrand, II, 250-251.

[74] Another means of achieving the same end was suggested by General Pinckney and Morris -- that the members of the Senate receive no compensation. Thus none but the rich could be members. Farrand, I, 426, 512-513.

[75] Farrand, I, 219.

[76] Ibid., pp. 513, 151.

wanted it to be chosen by electors, elected by the people of the states according to election districts.[77] Dickenson proposed that it be elected by the state legislatures, since this would at the same time give the states representation and result in the election of a distinguished body of men.[78] In spite of Wilson and Madison's warning that since the state legislatures were themselves agrarian, such an election could not protect the commercial, moneyed classes against the landed debtors, the motion finally passed unanimously.[79]

Another check on the will of the majority devised by the founding fathers was the veto power of the national executive. Therefore it was highly important that the president be a man of ability and wealth so that he could forbid any unjust or ill advised legislation which might be pushed through Congress. Most of the delegates agreed that an indirect election would best insure the choice of such a man. Several plans for his election were proposed. Hamilton's, which was not presented to the convention, provided for the election of presidential electors by citi-

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[77] Ibid., p. 291.

[78] Ibid., p. 150. Gerry agreed and hoped that such a refinement of the election would act as a check against the landed faction. Ibid., p. 152.

[79] Farrand, I, 156.

zens possessing "... an estate of inheritance or for three lives in land, or a clear personal estate of ... one thousand Spanish milled dollars ... ."[80] The primary electors thus chosen were to have met to elect secondary electors and to draw up lists of men eligible for the presidency. The second electors would have met with the Chief Justice of the Supreme Court to examine the lists and choose a president if no man had a majority of votes. The "Gouvernour" thus chosen was to have served during good behavior.[81] Thus Hamilton's precautions that the executive should belong to the right class were double. Not only was the election very indirect, but the substantially propertied class alone could participate in the election even at its origin. And after the "Gouvernour" was elected, he was in office virtually for life. Vested with the veto powers which Hamilton wanted to give him, he would have been a check on "the popular passions" indeed.

Charles Pinckney's method of insuring that the president should be a man of property was much simpler than Hamilton's; he merely proposed that there be a large property qualification for the office of president and also for those of the federal judges and the members of both houses of Congress.

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[80] Works, I, 355; Farrand, III, 622.

[81] Ibid.

> ... Were he to fix the quantum of property which should be required, he should not think of less than one hundred thousand dollars for the President, half of that sum for each of the Judges, and in like proportion for the members of the Natl. Legislature.[82]

Such a provision would have automatically eliminated Lincoln from the presidency.

Who was to enjoy the right of suffrage, of electing the president, senators, and representatives was another momentous question which stirred the convention.[83] Most of the delegates favored a property qualification for suffrage. Morris wanted a clause in the Constitution restricting the vote to freeholders.[84] Otherwise he feared the growth of an aristocracy as a result of the propertyless many selling their votes to the wealthy few. Conscious of the power of wealth in politics, Morris looked gloomily to the future when it would control the ballot:

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[82]Farrand, II, 248. Another plan to make the election of the executive indirect was that suggested by Randolph -- to have him elected by the legislature. A heated debate took place on this motion. Madison and Morris preferred a direct election by the freeholders. Farrand, II, 29-31. Wilson, who usually defended the majority principle so vehemently, favored an indirect election. Farrand, I, 80.

[83]All of the opinions quoted and discussed here were expressed during the debate on the election of representatives. Since the house was to be the popularly elected body, a delegate's opinion on the extension of the suffrage in this election indicates the limits to which he was willing to go in granting the vote.

[84]Farrand, II, 201.

> We should not confine our attention to the present moment. The time is not distant when this country will abound with mechanics and manufacturers who will receive their bread from their employers. Will such men be the secure and faithful Guardians of liberty? ... The man who does not give his vote freely is not represented. It is the man who dictates the vote. Children do not vote ... because they want prudence ... . The ignorant and the dependent can be as little trusted with the public interest.[85]

Madison agreed on the desirability of a property qualification but thought it inexpedient to make it a freehold since such a provision might easily alienate important classes. He agreed, however, that a freehold requirement would probably give the best security against the invasion of property rights by a future proletarian rabble or the use of such a rabble as a tool by "opulence & ambition ....."[86]

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[85] Ibid., 202.

[86] Farrand, II, 203-204. There was a lively debate on the wisdom of a freehold requirement. Ibid., 201-205. Many delegates opposed it solely on practical grounds, others because it would not protect the mercantile class. Franklin alone opposed any limitation of the essential right of suffrage on principle. "It is of great consequence," he urged, "that we should not depress the virtue & public spirit of our common people; of which they displayed a great deal during the war, and which contributed principally to the favorable issue of it." He contrasted the spirit of the American and British sailors during the war and attributed the patriotic, self-sacrificing valor of the American seamen to "... the different manner in which the common people were treated in America and G. Britain." He was sure that a freehold requirement would "... give great uneasiness in the populous States. The sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised, and there are a great many persons of that description." Farrand, II, 204-5. It was finally decided to leave the regulation of voting to the individual states.

These speeches and the debate in which they occurred reveal that the majority was generally distrusted in the convention as ignorant, gullible, incapable of electing proper governors, and likely to upset the status quo in the tenure of property. With the recent nightmare of Shays' rebellion still vivid in their memories, the men of seventeen eighty-seven looked to future dangers from the indigent and poorer classes. Morris was the most outspoken delegate on this subject:

> Life and liberty were generally said to be of more value, than property. An accurate view of the matter would nevertheless prove that property was the main object of Society. The savage State was more favorable to liberty than the Civilized; and sufficientlv so to life. It was preferred by all men who had not acquired a taste for property; it was only renounced for the sake of property which could only be secured by the restraints of regular Government. ... If property then was the main object of Govt. certainly it ought to be one measure of the influence due to those who were to be affected by the Government.[87]

If few of Morris's colleagues would have concurred in this extreme statement of the stake in society theory, most would certainly have listed life, liberty and property as the three equally important objects of government. This is implicit in their speeches and actions. No one but Franklin and Wilson fearlessly advocated majority rule. Wilson alone arose to answer Morris:

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[87]Farrand, I, 533.

> Conceiving that all men wherever placed have equal rights and are equally entitled to confidence, he viewed without apprehension the period when a few States should contain the superior number of people. The majority of people wherever found ought in all questions to govern the minority. ... if numbers be not a proper rule, why is not some better rule pointed out. ... Again he could not agree that property was the sole or the primary object of Governt. & Society. The cultivation & improvement of the human mind was the most noble object. With respect to this object, as well as to other personal rights, numbers were surely the natural and precise measure of Representation.[88]

No one arose to concur with Wilson or to acclaim his sentiments -- according to Madison's notes, at least.

There was still another check on the majority devised by the framers of the Constitution -- the federal judiciary. Although the judicial branch was not the subject of as much debate as the executive and legislative, it was intended to act as a check on the majority will, for it was proposed as an essential part of a balanced government, and the importance of separating it from the legislative and executive branches was emphasized.[89] The purpose of a balanced government, it should be remembered, was to protect individual and minority rights.

The clearest exposition of the function of the federal courts made at this time was that by Hamilton in The Fed-

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[88] Farrand, I, 605.

[89] Ibid., pp. 21, 96-98, 104.

eralist. An independent judiciary, Hamilton asserted, is the best safeguard against "... the injury of the private rights of particular classes of citizens, by unjust and partial laws."[90] For if such laws opposed to the basic law of the land should be passed, they would be declared void:

> ... where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than by the former.
>
> This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor part in the community. ... it is not to be inferred ... that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents, incompatible with the provisions in the existing Constitution, would on that account be justifiable in a violation of those provisions.[91]

Here in 1788 were constitutionalism and judicial review, a combination of Federalist ideas that, if accepted, would make the decisions of Hamilton's generation, as interpreted by the Supreme Court, forever binding on subsequent generations. The utility of such a court to Hamilton was

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[90] The Federalist, LXXVIII, pp. 579-80.

[91] Ibid.

that it would be a bulwark against factious majorities led by demagogues.

The opinions of the framers of the Constitution, therefore, on suffrage, on the Senate, on the executive, on the judiciary, reveal that they were concerned about class conflict, that they were anxious to protect the property rights of the minority against the majority.

IV

A third type of attack on the majority principle which defies exact classification was that resulting from fear by the East of the power of future frontier states. This opposition to majority rule was a sort of tertium quid between the two types discussed heretofore, for it cannot be classified as arising entirely from a sectional or entirely from a class conflict. It resulted from a difference of sectional interests, obviously, but also from fear of the social class which inhabited the frontier, which was constantly pushing the fringe of civilization westward in order to escape from the poverty and legal restrictions which had burdened it in the coastal areas.

This criticism of majority rule, then, was a composite of certain elements from each of the two other principal types.

It was not the result of a new conflict within American society which suddenly appeared after the Revolution. The tidewater and frontier sections had always had different interests.[92] It was inevitable then, that this conflict should appear in the Constitutional Convention. For it was generally recognized that America's future lay in the west and southwest beyond the mountains. Hence some delegates were alarmed by the possibility that the

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[92]F. J. Turner says that the East always feared the political power of the west. "The English authorities would have checked settlement at the headwaters of the Atlantic tributaries and allowed the 'savages to enjoy their deserts in quiet lest the peltry trade should decrease.' ... But the English Government was not alone in its desire to limit the advance of the frontier ... . Tidewater Virginia and South Carolina gerrymandered those colonies to insure the dominance of the coast in their legislatures. Washington desired to settle a State at a time in the Northwest." In South Carolina the back country had no voice in the government at all till 1790, and even then only a minority voice, though it had a majority of the population. The Frontier in American History, New York, 1920, pp. 33-34.

Similar conditions existed in other states before the Revolution. In Pennsylvania the propertied class around Philadelphia controlled the government. The three old counties elected twenty-six delegates to the legislature, whereas the five, newer, frontier counties elected only ten. Ibid., p. 112. In North Carolina, which was governed by the coastal area, taxes and fees weighed so heavily on the indebted farmers of the upland, evictions for debt were so frequent, that open rebellion broke out and much blood was shed in the battle of the Alamance in 1771. Ibid., pp. 118-119.

original thirteen states might be outvoted by new western states.[93] Among these were Gouverneur Morris and Elbridge Gerry, who proposed to limit the power of a possible future western majority. Morris's ruling motive in all that he said on this subject was fear for the property interests of the ruling class of the East. Believing, as he did, that "property was the main object of Society"[94] and that therefore the protection of it was the primary purpose of government, he anticipated with some uneasiness the formation of new states in the west:

> He thought the rule of representation ought to be so fixed as to secure to the Atlantic States a prevalence in the National Councils. The new States will know less of the public interest than those, will have an interest in many respects different, in particular will be little scrupulous of involving the Community in wars the burdens & operations of which would fall chiefly on the maritime States. Provision ought therefore to be made to prevent the maritime States from being hereafter outvoted by them. He thought this might be done by irrevocably fixing the number of representatives which the Atlantic States should respectively have, and the number which each new State will have.[95]

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[93] Madison, Wilson, and Mason, however, did not fear the shift of power to new states. They considered that it was inevitable and that any attempt to give new states a lower status than the original thirteen enjoyed would be both unjust and impractical. Farrand, I, pp. 584-585, 605, 578-579.

[94] Cf. p. 62 above.

[95] Farrand, I, 533-534.

Another means suggested by Morris for keeping a majority of votes in the eastern states was to leave Congress free to determine the manner of taking censuses and of apportioning representation among the states. This would give the established states along the Atlantic a chance to protect themselves, he thought, by determining the allotment of representatives between the new and old states. Because of the type of people who settled on the frontier, because of their ignorance, poverty, and lawlessness, the representatives from the western states would be unenlightened and incapable of administering public affairs on an equal footing with men from the maritime states, Morris argued.

> The back members are always most averse to the best measures. He mentioned the case of Pena. formerly. The lower part of the State had ye power in the first instance. They kept it in yr own hands & the country was ye better for it.[96]

Thus Morris admitted that the older, established part of Pennsylvania had held the political whip hand in the past, and he believed it just that it should have done so. He also feared that an agrarian faction — composed of southern maritime and western and southwestern interior states —

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[96] Ibid., p. 583.

making use of the increased power given it by the representation of three fifths of the slaves, would oppress commerce and destroy the wealth of the northern states. This was one reason he opposed including three fifths of the slaves in the ratio of representation. In order to protect the North against such an agrarian faction, Morris felt that he would have to vote for "ye. vicious principle of equality in the 2d. branch."[97]

Gerry stated arguments and made proposals similar to Morris's. He too feared that a shift of the balance of power to the west would result in depressed commerce and reduced wealth in the east. He too distrusted the people who moved out to the frontier. He wanted to limit the number of new states which might be admitted to the Union.

> He was for admitting them on liberal terms, but not for putting ourselves into their hands. They will if they acquire power like all men, abuse it. They will oppress commerce, and drain our wealth into the Western Country. To guard agst. these consequences, he thought it necessary to limit the number of new States to be admitted into the Union, in such a manner, that they should never be able to outnumber the Atlantic States. He accordingly moved "that in order to secure the (liberties of the) States already confederated, the (number of) Representatives in the 1st. branch (of the States which shall hereafter be established) shall never exceed in number, the Representation from such of the States (as shall accede to this confederation)."[98]

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[97]Farrand, I, 604.

[98]Farrand, II, pp. 2-3. The New England Federalists generally considered the Louisiana Purchase a mortal blow

This particular criticism of majority rule, then, resulted from sectional discord. The backwoods and the coastal towns had conflicting economic interests. Hence, like the delegates from the small and from the southern states, Morris and Gerry proposed to take practical steps to prevent a possible adverse majority from gaining power. And also like these delegates, they gave no elaborate,

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to the political influence of the New England states. John Quincy Adams talked about it with Rufus King after the Congressional session of 1804. "We agreed, and lamented that one inevitable consequence of the annexation of Louisiana to the Union would be to diminish the relative weight of the Northern section; that it would aggravate the evil of the slave representation, and endanger the Union itself, by the expansion of its bulk ... ." Documents Relating to New England Federalism, 1800-1815, ed. Henry Adams, Boston, 1877, p. 148. Some of the extremists wanted to secede from the Union. Roger Griswold writing to Oliver Wolcott in March, 1804, said, "... there can be no safety to the Northern States without a separation from the confederacy. The balance of power under the present government is decidedly in favor of the Southern States; nor can that balance be changed or destroyed. The extent and increasing population of those States must for ever secure to them the preponderance which they now possess." Ibid., p. 366. Such sentiments as these finally flowered in the Hartford Convention in 1814. One of the grievances listed by this convention as a basis for secession was that "the admission of new States into the Union, formed at pleasure in the Western region, has destroyed the balance of power which existed among the original States, and deeply affected their interest." Ibid., p. 315.

theoretical defense of the justice of the measures which they proposed. They used only practical arguments in their speeches. They pointed out what might happen to the trade and property of the east and exhorted the convention to act.

But this exhortation was also motivated by distrust of the frontiersman as a lower class, as wild, unmanageable, unscrupulous, ignorant men. In this respect Morris and Gerry's objection to rule by a majority composed of westerners could be classified as arising from conflict between the lower and upper strata of society. They both would probably have agreed heartily with Timothy Dwight's picture of the pioneers as shiftless, unkempt, undependable -- a group spawning demagogues which the coastal society was well rid of.

> The class of men, who have been the principal subject of these remarks, have already straggled onward from New-England, as well as from other parts of the Union, to Louisiana. In a political view, their emigration is of very serious utility to the ancient settlements. All countries contain restless inhabitants; men impatient of labour; men, who will contract debts without intending to pay them; who had rather talk than work; whose vanity persuades them, that they are wise, and prevents them from knowing, that they are fools; who are delighted with innovation; who think places of power and profit due to their peculiar merits; who feel, that every change from good order and established society will be beneficial to themselves; who have nothing to lose, and therefore expect to be gainers by every scramble; and who, of course, spend life in disturbing others, with the hope of gaining some-

thing for themselves. Under despotic governments they are awed into quiet; but in every free community they create, to a greater or less extent, continual turmoil; and have often overturned the peace, liberty, and happiness of their fellow citizens. In the Roman commonwealth, as before in the republics of Greece, they were emptied out, as soldiers, upon the surrounding countries; and left the sober inhabitants in comparative quiet at home. As things actually were, they finally ruined all these states; for some of them had, as some of them always will have, sufficient talents to do mischief; at times, very extensive. The Gracchi, Clodius, Marius, and Mark Antony, were men of this character. Of this character is every demagogue, whatever may be his circumstances. Power and profit are the ultimate objects, which every such man, with a direction as steady as that of the needle to the pole, pursues with a greediness unlimited and inextinguishable. ...

In mercy, therefore, to the sober industrious, and well-disposed inhabitants, Providence has opened in the vast western wilderness a retreat, sufficiently alluring to draw them away from the land of their nativity. We have many troubles even now, but we should have many more if this body of foresters had remained at home.[99]

Many of these foresters, however, became solid citizens, developed a respect for property by owning some of their own.

It is to be observed, that a considerable number even of these people become sober, industrious citizens, merely by the acquisition of property. The love of property, to a certain degree, seems indispensable to the existence of sound morals. I have never had a servant, in whom I could confide, except such as were desirous to earn and preserve money. The conveniences and the character attendant on the possession of property fix even these restless men at times, when they sell the soil of their first farms at an enhanced price.[100]

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[99]Timothy Dwight, Travels in New England and New York, 4 vols., London, 1823, II, 441-443.

[100]Ibid., p. 443.

Such opinions as these about their future political opponents kept the eastern conservatives in an uneasy frame of mind. And such opinions place the criticism of majority rule which arose from this uneasiness outside the strict category of sectional economic conflict. True, there was a sectional economic conflict involved. But in addition there was a conflict between social strata, as there was not in the small state-large state and the North-South controversies. In these two latter conflicts, the members of the upper stratum in one section distrusted the members of the upper stratum in another section. Only the divergent economic interests of the two sections involved were injected into the debate. Neither the small states nor the southern states pictured their opponents, the inhabitants of the northern or large states, as degraded, ignorant, dangerous men of a lower order. But Morris and Gerry both strongly implied this when they pointed out the divergency of economic interests which would exist between east and west in the future.

Hence we have a further classification of criticisms of the majority principle. In addition to that arising from a horizontal economic conflict between the same class in different sections, and to that arising from a vertical economic conflict between different classes -- lower and

upper -- in the same section, we have a conflict which might be called diagonal, arising from different classes -- again lower and upper -- in different sections of the country. Thus:

HYBRID CONFLICT



PURE CLASS CONFLICT - VERTICAL
(between strata in same section)

Upper Class - within - North, South, Small, Large states

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Lower Class - within - North, South, Small, Large states

PURE SECTIONAL CONFLICT - HORIZONTAL
(Between same class in different sections)

North UPPER CLASS Small States ⟷ South UPPER CLASS Large States

For the sake of unity and because of the necessary limitations of time and space, but principally because it is most pertinent to political and social democracy, only the criticism resulting from vertical, purely class conflict will be treated in this dissertation.

V

There is one more phase of the criticism of majority rule which occurred at this time yet to be considered, an important and interesting phase which should not be neglected. It is a paradox, for it is composed not of attacks on the majority principle, but of defenses of it, and defenses of it by such men as Morris, Madison, and Hamilton, who on occasion inveighed against it most persuasively. And yet when their apparently contradictory statements are carefully examined, the defense of the majority principle by these men throws much light on their criticisms of it.

Some of this peculiar defense of majority rule occurred at the Constitutional Convention in the course of the debate on state representation in the senate. Morris argued against an equal representation of the states in the senate, for

he feared that the small states would use obstructionist tactics to extort concessions from the large states, as they had done in the past.

> What is to be the check in the Senate? none; unless it be to keep the majority of the people from injuring particular states. But particular states ought to be injured for the sake of a majority of the people, in case their conduct should deserve it. Suppose they should insist on claims evidently unjust, and pursue them in a manner detrimental to the whole body? Suppose they should give themselves up to a foreign influence.[101]

When it suited his purpose, Morris assumed that the majority principle was natural and just. And he was one of those who called most loudly for checks against a western majority and a majority of the whole people.

As a representative of a large state, Madison also opposed equality of state representation in the senate, lest the small states form a coalition and block the will of the majority represented by the large states. He listed several objections to such a majority:

> 1. the minority could negative the will of the majority of the people. 2. they could extort measures by making them a condition of their assent to other necessary measures. 3. they could obtrude measures on the majority by virtue of the peculiar powers which would be vested in the Senate.[102]

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[101] Farrand, I, 552.

[102] Farrand, II, 9.

Madison also used current faith in the majority principle in defending southern interests against northern encroachment. An equal representation of the states in the senate, he argued, would not only give the north a disproportionate power in the legislative branch, but would perpetuate that power so that in the future when the south would undoubtedly have a majority of the population of the nation, it would still have only a minority of the votes in Congress. Thus the minority would rule the majority. "The perpetuity" which equal representation "would give to the ... Northn. agst. the Southn. Scale was a serious consideration."[103] At the Virginia convention Madison used the majority principle in the debate with Patrick Henry over ratification of the Constitution. He criticised the provision of the Articles of Confederation which required a unanimous agreement of the states for a change in the government as obstructing the majority will.[104]

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[103] Ibid., p. 10.

[104] "Does not the thirteenth article of the Confederation expressly require that no alteration shall be made without the unanimous consent of all the states? Could any thing in theory be more perniciously improvident and injudicious than this submission of the will of the majority to the most trifling minority? ... Is it not self-evident that a trifling minority ought not to bind the majority?" Elliot, Debates, III, pp. 88-89.

Edmund Randolph, who in the federal convention had attributed the evils which plagued the United States to

At the New York convention Hamilton made use not only of the majority principle but also of another central article of the democratic faith -- the right of popular election of representatives and executives. Answering a proposal that a clause be included in the Constitution to guarantee control of the government by the "middling class" or yeomen,[105] Hamilton argued that if the people chose to elect the ablest and wealthiest men as representatives, they had a right to do so:

> ... if the people have it in their option to elect their most meritorious men, is this to be considered as an objection? Shall the Constitution oppose their wishes, and abridge their most invaluable privilege?[106]

This implicit approval of the majority principle resulted from Hamilton's willingness to allow universal or near universal suffrage if that would lead to the election of men from the upper rather than from the "middling" class. For he believed that even the vices of the wealthy "... are

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"the turbulence and follies of democracy," (Farrand, I, 51) at the Virginia convention plead with Henry to submit to the will of the majority of the convention and support the new Constitution when he returned to his home. "... let the contest be what it may the minority should submit to the majority." Elliot, Debates, III, 596.

[105] Elliot, Debates, II, 247-248.

[106] Ibid., 256.

probably more favorable to the prosperity of the state than those of the indigent, and partake of less moral depravity."[107] So he asserted the principles of Paine and Jefferson, which he detested, in order to block a bid for power by the lower classes:

> ... the true principle of a republic is, that the people should choose whom they please to govern them. Representation is imperfect in proportion as the current of popular favor is checked. This great source of free government, popular election, should be perfectly pure, and the most unbounded liberty allowed.[108]

Thus the man who so admired the British Constitution, who wished to introduce such a high property qualification for voting, could rise to the defense of popular elections and talk in glittering generalities like the veriest democrat when a limitation of the power of the wealthy class was proposed.[109] For the proposed limitation would have guaranteed a definite number of representatives to the "middling" class; whereas a free election would have left the wealthy class untrammeled to gain as many seats as it could. And Hamilton preferred a free election in which,

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[107] Ibid., p. 257.

[108] Ibid.

[109] Hamilton also referred to the people as the only proper source of all governmental authority in The Federalist, when he was expounding the principal defect of the

without hindrances, the wealthy class could take its chances and probably gain many seats.

Hamilton frequently used the majority principle as a kind of political axiom when it fitted into his arguments. He opposed the equal voting of states in the senate, because, he said, it "... contradicts that fundamental maxim of republican government, which requires that the sense of the majority should prevail."[110] Hamilton used the same argument -- the naturalness of majority rule -- in opposing the requirement of more than a majority for a quorum and in some cases for a decision in the legislature.[111]

Confederation, that it derived its authority from the state governments and operated not on the people directly but on the several state governments. Hence, having no authority in itself, it was impotent to enforce its decrees. What the country needed, said Hamilton (and Madison), was a federal government, deriving its authority from the people and operating directly on them:

"It has not a little contributed to the infirmities of the existing federal system, that it never had a ratification by the PEOPLE. Resting on no better foundation than the consent of the several legislatures, it has been exposed to frequent and intricate questions concerning the validity of its powers ... . The fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE. The streams of national power ought to flow immediately from that pure original fountain of all legitimate authority." The Federalist, XXII, pp. 193-194.

[110] The Federalist, XXII, p. 187.

[111] Ibid., LVII, pp. 446-447.

When writing against the Whiskey Rebellion in a pamphlet signed "Tully," Hamilton pointed out that the rebels were opposing the will of the majority and thus denying a fundamental republican principle. The true question which the rebellion raised was plainly this:

> Shall the majority govern or be governed? shall the nation rule or be ruled? shall the general will prevail, or the will of a faction? shall there be government or no government? It is impossible to deny that this is the true and whole question.[112]

Early in his career, in 1774 and 1775, Hamilton wrote pamphlets in defense of the Colonies which are in sharp contrast to his speeches in the federal convention. Since all men have a common nature and therefore common rights, and since self-government is a natural right, he argued, the English had no right "to dispose of the lives and properties" of Americans.[113] For this government by the English placed the Americans in a state of virtual slavery; their lives and properties were not their own to dispose of but depended on the pleasure of their masters in London.[114] Colonists have as much right to self-

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[112] "Tully," Works, VI, p. 414.

[113] "A Full Vindication of the Measures of Congress," Works, I, 6.

[114] Ibid.

government as men in the mother country, for civil liberty, which is

> ... only natural liberty, modified and secured by the sanctions of civil society ... cannot possibly have any existence where the society for whom laws are made have no share in making them.[115]

These are pretty radical statements. One might logically conclude from them that all men should enjoy the right to vote and thus participate in their own government, that the will of the majority should prevail. But not so. Even in these early polemics when Hamilton was shouting "equal rights" in support of the colonial cause, he did not intend that every man should have the vote, but only men who were capable of using their votes freely. Only a "free agent,"[116] only a man possessing a certain quantity of property, was to be allowed to vote for his own representatives. Since qualified suffrage was universal in the colonies, Hamilton naturally spoke of such natural rights as self government and voting with this in mind. The reason for a property qualification for voting, Hamilton explained by quoting Blackstone, was

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[115] "The Farmer Refuted," Works, I, pp. 87-88.

[116] In England a free agent was a man "... possessing a freehold of forty shillings per annum... ." Works, I, 90.

> ... to exclude such persons as are in so mean a situation that they are esteemed to have no will of their own. If these persons had votes, they would be tempted to dispose of them under some undue influence or other. This would give a great, an artful, or a wealthy man a larger share in elections than is consistent with general liberty. If it were probable that every man would give his vote freely and without influence of any kind, then, upon the true theory and genuine principles of liberty, every member of the community, however poor, should have a vote in electing these delegates, to whose charge is committed the disposal of his property, his liberty, and his life.[117]

The indigent, then, were not to be allowed to enjoy their natural rights, or rather they had not earned them and therefore could not enjoy them.

These qualifications can be used as a key to the apparently irreconcilable contradictions of some of Hamilton's statements on majority rule and democratic government. He held, on the one hand, that majority rule was the "fundamental maxim of republican government" and that all legitimate government was derived from the "consent of the people."[118] Yet, on the other, he demanded a check on the majority, lest it oppress the few,[119] and in the brief of the speech which he gave before the federal conven-

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[117] Works, I, 89-90.

[118] Cf. p. 80, above.

[119] Cf. p. 54 above, also The Federalist, LI, pp. 400-402.

tion he states the need of a principle in government "... capable of resisting the popular current." This principle is

> ... that there must be a permanent will.
> Gentlemen say we need to be rescued from the democracy. But what the means proposed?
> A democratic Assembly is to be checked by a democratic Senate, and both these by a democratic chief magistrate.
> The ends will not be answered -- the means will not be equal to the object.[120]

How can these seemingly antithetical statements be reconciled? Keeping in mind Hamilton's definition of the "free agent" and also the high property qualifications which he proposed for electors of the president and senators, one can interpret his statement that the majority should rule to mean that a majority of those fit to govern, a majority of the propertied class, not of the entire population, should rule. Expediency is the best explanation of Hamilton's defense of the rights of suffrage and self government; they fitted conveniently into his arguments against the British. Later, after the Revolution, when he had seen the results of the exercise of these rights, he was less enthusiastic about them. He then admired the

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[120] Works, I, 375-377. Quoted by V. L. Parrington, Main Currents in American Thought, An Interpretation of American Literature from the Beginnings to 1920, 3 vols. New York, 1927-1930, I, 301.

British Constitution, because under it there was "a permanent will" in the government to check the mercurial popular will. Yet he made speeches and wrote many of The Federalist papers in defense of republicanism and the new Constitution. Again expediency is the best explanation of these opposed positions.[121] He acquiesced in republicanism because under the circumstances there was no alternative for him. He knew there was no chance in America of establishing a government with sovereignty independent of the people. So he resigned himself to a republican government containing many checks -- a president chosen by electors, a senate chosen by the state legislatures, an independent judiciary -- but nevertheless quite democratic. And even though he believed that the freehold requirements for suffrage in the various states were not a sufficient guarantee that the ablest men would be elected to office, he made use of the majority principle because it was convenient. He was willing -- nay anxious -- for the majority to rule when it was with him, when it had ruled or would rule in favor of the new Constitution, when it would rule through a vigorous federal government which would take the place of an impotent confederacy, when the majority had ruled against the rebellious Pennsylvania farmers. He was un-

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[121] Cf. his speech in the Constitutional Convention, Farrand, I, 288-289.

willing for it to rule when he was not a member of it, when it might endanger the interests of his class or section.

The same was true of Madison, Morris, and others. Madison appealed to the majority principle in debating with the delegates from the small states on representation in the senate,[122] yet he wanted a freehold requirement for suffrage. Morris likewise called on the small states to submit to the majority will and emphatically asserted that a "part should be injured for the sake of the whole,"[123] yet he too recommended checks on the propertyless mob and on new western states. He was unwilling that his class or his section should be injured for the common welfare, even though his class and section were minorities.

It was natural of course that these men in the course of their debates should use such an important article of the republican faith as the majority principle: and probably they were in good faith when they did this. The use of the majority principle by the very founding fathers who criticised it was not as contradictory as it seems. For they thought that the majority should rule except when it would be "factious" and would violate the ethical abso-

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[122] Cf. p. 34 above.

[123] Cf. p. 76 above.

lute.[124] They attempted to prevent this kind of majority from forming and tried to insure the dominance of the propertied class by establishing a government of checks and balances. For they did not consider that men of sufficient

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[124]The idea that the majority is subject to the laws of morality as much as any individual was expounded in Publicola by young John Quincy Adams. Criticising Paine's Rights of Man, Adams asserted that the principle that a whole nation or the majority of a nation "... has a right to do whatever it pleases, cannot in any sense whatever be admitted as true. The eternal and immutable laws of justice and of morality are paramount to all human legislation. The violation of those laws is certainly within the power, but it is not among the rights of nations. ... If a majority are bound by no law human or divine, and have no other rule but their sovereign will and pleasure to direct them, what possible security can any citizen of the nation have for the protection of his unalienable rights? The principles of liberty must still be the sport of arbitrary power, and the hideous form of despotism must lay aside the diadem and the scepter, only to assume the party-colored garments of democracy." Writings of John Quincy Adams, ed. W. C. Ford, 7 vols., New York, 1913-17, I, 70-71. Cf. also pp. 83, 109.

Jefferson expressed a similar idea in his first inaugural address: "All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable; that the minority possess their equal rights, which equal laws must protect, and to violate which would be oppression." The Writings of Thomas Jefferson, ed. H. A. Washington, 9 vols., Washington, D. C., 1853-54, VIII, 2.

But there was one important difference between Jefferson and Adams on this point. Jefferson had faith in the common man, that he would rule justly and preserve a strong and equitable government, that the majority would not discriminate against the minority. Adams and the other Federalists did not have such a faith. To them, the rule of the common man, democracy, was mob rule; it was inevitable that a majority composed of such ignorant, depraved human beings would violate the rights of the few; and they sought means to check the majority.

property would be a "factious majority," would seek to advance their own interests at the expense of the general welfare; for men of property were fit to govern, were the best governors. They would not violate justice by oppressing property, for they were the owners of property themselves. They would not neglect the general welfare, for the general welfare was identical with their own. Property rights were sacred. It never occurred to the founders of the nation to question the absolute justice of the distribution of wealth in their day. The untapped resources of North America were too great, it was too easy for an ambitious man to acquire property.

Thus, an analysis of this paradoxical defense of majority rule further supports the thesis that the actual criticism of majority rule which occurred at this time resulted primarily from economic conflicts or from fear of them. Cultural issues between the minority and majority were of course closely linked to the economic and played an important part in motivating the founding fathers in their criticism of the majority principle. To them property and culture were inseparable. Hence they believed that there was good majority rule and bad majority rule. Good majority rule was rule by a majority of the property holders; bad was rule by a majority of the entire

population. But perhaps the true opinion on majority rule of the men of this era, whatever their motives in defending it may have been -- whether to insure dominance of the wealthy class, to break the power of the small states and establish a federal government, to put down a whiskey rebellion, or to ratify the proposed Constitution -- can be reduced to this maxim:

MAJORITY RULE IS JUST IF I AM A MEMBER OF THE MAJORITY, UNJUST IF I AM NOT.

It can be safely concluded that the founding fathers did not defend the majority principle because of any innate faith in it as an abstract principle, but because of its utility.

V

Such were the opinions of the framers of the Constitution on the majority principle. But there is still another major source of criticism of it contemporary with The Federalist and the federal and state conventions. This source is the political writings of John Adams. In these unsystematic, repetitious works we find the most detailed, the most fully developed theoretical expression of the prin-

cipal criticisms of majority rule which appeared in the seventeen-eighties. Adams' ideas are often identical with or very similar to those expressed in the various convention debates and in The Federalist. But this dissertation is concerned solely with understanding the ideas which were in the air at this time, not with tracing their sources. Since Adams' early opinions on government remained largely unchanged throughout his life,[125] all of his writings -- his letters to Samuel Adams, 1790, and to John Taylor, 1814, as well as his major treatises on government, A Defense of the Constitutions of Government of the United States, written in 1786, and Discourses on Davila, written in 1789-90 -- will be considered as a whole in the exposition of his theory of balanced government as a check on the majority.

Adams based his political theory on a pessimistic view of human nature. The evil in man far outweighs the good, he asserted.

> ... every moral theorist will admit the selfish passions in the generality of men to be the strongest. ... We are not, indeed, commanded to love our neighbor better than ourselves. Self interest, private avidity, ambition, and avarice, will exist in every state of society, and under every form of government.[126]

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[125] Cf. p. 243 below.

[126] Works, ed. C. F. Adams, VI, 57.

Adams reduced this basic selfishness in mankind to one driving force, "the passion for distinction,"[127] which manifests itself in various forms -- as "Emulation" when it is gratified by fair means, as "Ambition" when power is the means of gratifying it, as "Jealousy" when associated with fear and apprehension of someone else's success, as "Envy" when it appears as mortification at the superiority of another.[128] There is another important passion in human nature, "Benevolence," or "an affection for the good of others," according to Adams, but it is too weak to counteract the stronger, selfish affections. Nature, therefore, "kindly added to benevolence, the desire of reputation in order to make us good members of society." By so doing, thoughtful Mother Nature sanctioned with rewards and punishments the law which enjoins men to respect the rights of others. The rewards are "the esteem and admiration of others," the punishments, their "neglect and contempt."[129] Adams believed that

> The desire of the esteem of other is as real a want as hunger; and the neglect and contempt of the world as severe a pain as the gout or stone.[130]

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[127] Ibid., p. 232.

[128] Ibid., p. 233.

[129] Works, VI, 234.

[130] Ibid.

Thus the passion for distinction is the great fount of social activity. It is the indispensable instrument by which governments keep mankind in order.

Although men seek to satisfy this passion in various ways such as gaining literary eminence or displaying military prowess, the most common means of satisfying it is by the possession of wealth. For "riches attract the attention, consideration, and congratulations of mankind."[131] Great wealth is a universal source of distinction, far more efficacious than moral perfection in attracting attention. There is no other adequate explanation for the excessive efforts put into acquiring and preserving it, for the pride of the rich in their wealth and the shame of the poor in their poverty. Hence the struggle for wealth among men is universal and bitter.

> The great majority trouble themselves little about merit, but apply themselves to seek for honor, by means which they see will more easily and certainly obtain it, by displaying their taste and address, their wealth and magnificence ... and if these fail ... they have recourse to artifice, dissimulation, hypocrisy, flattery ... . What chance has humble merit in such a scramble?[132]

Adams held inequality to be as fundamental in human nature, as much a part of the natural law, as the passion

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[131] Ibid., p. 238.

[132] Works, VI, 250.

for distinction. In fact the two - inequality and emulation -- are inextricably intertwined.

> God in the constitution of nature, has ordained that every man shall have a disposition to emulation, as well as imitation, and consequently a passion for distinction; and that all men shall not have equal means and opportunities of gratifying it.[133]

Other forces of the natural law aggravate this inequality. In addition to the psychological drive of emulation, man is moved by two powerful physical appetites -- hunger and sex.

> That the first want of man is his dinner, and the second his girl, were truths well known to every democrat and aristocrat, long before the great philosopher Malthus arose, to think he enlightened the world by the discovery.[134]

However, Adams proceeded to make use of the same arguments as Malthus to support his thesis that inequality of condition is the inevitable consequence of inequality of ability. For, he argued, the strength of the sexual appetite is so great that men rush headlong into hasty marriages with the result that

> ... the multiplication of the population so far transcends the multiplication of the means of subsistence, that the constant labor of nine tenths of our species will

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[133] Ibid., pp. 271-272.

[134] Ibid., p.516.

forever be necessary to prevent all of them from starving with hunger, cold, and pestilence. Make all men Newtons, or, if you will, Jeffersons, or Taylors, or Randolphs, and they would all perish in a heap!

Knowledge, therefore, sir, can never be equally divided among mankind, any more than property, real or personal, any more than wives or women.[135]

Thus society would disintegrate if all men had equal abilities and if all distinctions were abolished.

Adams called the men who were gifted with superior abilities "natural aristocrats." His theory of natural aristocracy was based on the axiom that men, though born with equal rights, are born with unequal abilities. "Physical inequalities are proclaimed aloud by God Almighty through all his works."[136] By natural aristocracy Adams meant

> ... those superiorities of influence in society which grow out of the constitution of human nature. By artificial aristocracy, those inequalities of weight and superiorities of influence which are created and established by civil laws. ... By aristocracy, I understand all those men who can command, influence, or procure, more than an average of votes; by an aristocrat, every man who can and will influence one man to vote besides himself. Few men will deny that there is a natural aristocracy of virtues and talents in every nation and in every party, in every city and village. Inequalities are a part of the natural history of man.[137]

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[135] Works, VI, 516.

[136] Ibid., p. 458.

[137] Works, VI, 451.

Adams' concept of natural aristocracy was very broad. Anyone who has risen above the mass of men in the struggle for distinction belongs.to this class.

> ... Land and paper wealth are not the only sources of aristocracy. There are master shipwrights, housewrights, masons, etc. etc., who have each of them from twenty to a hundred families in their employment, and can carry a posse to the polls when they will. These are not only aristocrats, but a species of feudal barons. What are demagogues and popular orators, but aristocrats? John Cade and Wat Tyler were aristocrats. Callender and Paine were aristocrats. Shays and Fries were aristocrats. Mobs never follow any but aristocrats.[138]

Thus as a result of a natural law as undeniable as the law of gravitation, a sort of nobility arises in society. Even though inherited titles are abolished, distinctions endure if men are left free to use their natural abilities. And justice demands that men be allowed to use their talents freely to acquire and preserve property.

> After all, as long as property exists, it will accumulate in individuals and families. As long as marriage exists, knowledge, property, and influence will accumulate in families. ... so sure as the idea and the existence of property is admitted and established in society, accumulations of it will be made, - the snowball will grow as it rolls.[139]

Man's basic physical needs and passion for emulation, then, combined with his natural inequality, lead to the ex-

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[138] Ibid., p. 508.

[139] Letter to Jefferson, Works, X, 103.

istence of an aristocracy of virtue, talents, and wealth, and consequently to a struggle between individuals and classes, since the means of satisfying the appetites for food, sexual pleasure, and distinction are limited.

> Leisure for study must ever be the portion of a few. ... Food, raiment, and habitations, the indispensable wants of all, are not to be obtained without the continual toil of ninety-nine in a hundred of mankind. As rest is rapture to the weary man, those who labor little will always be envied by those who labor much... . ... The controversy between the rich and the poor, the laborious and the idle, the learned and the ignorant, distinctions as old as the creation, and as extensive as the globe .. will continue, and rivalries will spring out of them.[140]

This class struggle is reflected in politics, for emulation, rivalry, the desire to excel, exists between nations, sections of nations, and classes as well as between individuals.[141] The majority of men, who are poor and lack the ability to improve their lot, to succeed in the struggle for wealth and distinction, naturally band together and use their political power to compensate for their natural weaknesses, unless they are prevented from doing so. Because of this universal political conflict, governments are necessary to preserve liberty. The mere love of liberty is not enough.

> Some political institutions must be prepared, to assist this love against its enemies. Without these, the

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[140] Works, VI, p. 280.

[141] Ibid., pp. 267-269.

struggle will ever end only in a change of impostors. When the people, who have no property, feel the power in their hands to determine all questions by a majority, they ever attack those who have property, till the injured men of property lose all patience, and recur to finesse, trick, and stratagem, to outwit those who have too much strength.[142]

Property rights are endangered, then, because the selfish men who compose the majority do not scruple to use their power unjustly against the rich:

> Suppose a nation, rich and poor, high and low, ten millions in number, all assembled together; not more than one or two millions will have lands, houses, or any personal property ... . Perhaps, at first, prejudice, habit, shame or fear, principle or religion would restrain the poor from attacking the rich ... but the time would not be long before ... debts would be abolished ... taxes laid heavily on the rich ... a downright division of everything be demanded and voted.[143]

Such actions would work an outrageous injustice, held Adams, for the right of acquiring and bequeathing property is a sacred natural right:

> The moment the idea is admitted into society, that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence. ..."THOU SHALT NOT COVET" and "THOU SHALT NOT STEAL" ... must be made inviolable precepts in every society before it can be civilized or made free.[144]

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[142] Ibid., p. 418.

[143] Ibid., p. 9.

[144] Ibid.

It follows from Adams' theories of human nature and natural rights that one of the chief functions of government is to protect property rights. For property is sacred, and it is the end of government to communicate "happiness to the greatest number of persons possible,"[145] to protect the body politic, and "to furnish the individuals who compose it with the power of enjoying their ... natural rights and the blessings of life."[146] Each individual, whether rich or poor, should be free to exercise what talents he has been blessed with. Governments exist among men to insure this and to prevent one class from dominating another: "If the poor are to domineer over the rich, or the rich over the poor, we shall never enjoy the happi-

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[145] Works, IV, 193.

[146] Works, IV, 219. That the protection of property rights is the chief purpose of government was a common Federalist idea. It occurred in the Constitutional Convention and The Federalist. But Fisher Ames gave it its bluntest, most unequivocal expression. "... the essence, and almost the quintessence of a good government is to protect property and its rights. When these are protected, there is scarcely any booty left for oppression to seize; the objects and the motives to usurpation and tyranny are removed. By securing property, life and liberty can scarcely fail of being secured; where property is safe by rules and principles, there is liberty. It is precisely such a government that Great Britain wishes to find and to sustain, where ever her commerce and credit extend ... ." The Works of Fisher Ames with a Selection from his Speeches and Correspondence. ed. Seth Ames. 2 vols. Boston, 1854, II, 166.

ness of good government... ."[147] It is essential to an orderly society that the rights of both classes be recognized. But those who are most concerned for the rights of men too often speak only of the rights of the poor and forget about or ignore the rights of the rich.

> It is agreed that "the end of all government is the good and ease of the people, in a secure enjoyment of their rights, without oppression"; but it must be remembered, that the rich are people as well as the poor; that they have rights as well as others; that they have as clear and as sacred a right to their large property as others have to theirs which is smaller; that oppression to them is as possible and as wicked as to others. The rich, therefore, ought to have an effectual barrier in the constitution against being robbed, plundered, and murdered, as well as the poor... .[148]

It is necessary, therefore, to check the majority will in order to prevent social injustice. But this is not the only important reason for checking it. A government in which the will of the majority had unlimited sway would be so unstable that it could not long endure. This sort of government, which Adams called democratic, is of two types -- pure democracy, in which the people rule directly when assembled together, and representative simple democracy, in which the people rule indirectly through representatives in a single assembly. Adams believed that pure democracy had probably never existed except in theory[149] and that simple

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[147] Works, VIII, 495.

[148] Works, VI, 65.

[149] Works, VI, 448.

representative democracy could exist only temporarily.[150] For the natural aristocrats, the ablest and the wealthiest, would soon dominate the single house by their leadership, unless they were separated from the rest in a senate. If this were done, the government would no longer be a simple democracy. If not, it would soon become an aristocracy or an absolute monarchy. For

> ... of all possible forms of government, a sovereignty in one assembly, successively chosen by the people, is perhaps the best calculated to facilitate the gratification of self love, and the pursuit of the private interest of a few individuals.[151]

A few eminent and able men would succeed in holding important offices permanently, would see that their friends were elected or appointed to other offices, would soon have the bestowal of all offices, would control the judiciary and ultimately the whole nation. Or the result of a simple, unicameral democracy might be an absolute monarchy. For as the men of talents and wealth continued to increase their power at the expense of the poorer common people, as the class struggle became more intense, the masses would "make friends, patrons and protectors among the gentlemen."[152]

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[150] Ibid., IV, 289-90.

[151] Works, VI, 58.

[152] Works, VI,

Parties, social upheavals, wars would result. Finally, to thwart the aristocratic party, the people would choose a gentleman or noble who would be "most able and willing to protect them" against the other aristocrats. They would augment his power to reduce the power of the aristocratic party, and an absolute monarch would be produced.[153] Or a simple, unchecked democracy might lead to feudalism.[154] At any rate, a simple democracy would soon destroy itself, would soon beget either of the two other types of simple government -- aristocracy, or monarchy.

> ... democracy never lasts long. It soon wastes, exhausts, and murders itself. There never was a democracy yet that did not commit suicide. It is in vain to say that democracy is less vain, less proud, less selfish, less ambitious, or less avaricious than aristocracy or monarchy. It is not true, in fact, and nowhere appears in history. Those passions are the same in all men, under all forms of simple government, and when unchecked, produce the same effects of fraud, violence, and cruelty.[155]
>
> We may appeal to every page of history we have hitherto turned over, for proofs irrefragable, that the people, when they have been unchecked, have been as unjust, tyrannical, brutal, barbarous, and cruel, as any king or senate possessed of uncontrollable power. The majority has eternally, and without one exception, usurped over the rights of the minority.[156]

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[153] Ibid.

[154] Ibid., pp. 272-73.

[155] Works, VI, 484.

[156] Ibid., p. 10. The resemblance of these statements to the remarks of Hamilton in the New York Convention is very close. "It has been observed ... that a pure democracy, if it were practicable, would be the most perfect gov-

It is evident, therefore, that Adams had equal distaste for absolute monarchy, absolute aristocracy, and absolute democracy. Republican government was the only good type in his opinion.

> It is a fixed principle with me that all good government is and must be republican. But ... there is not in lexicography a more fraudulent word. Whenever I use the word republic with approbation, I mean a government in which the people have collectively, or by representation, an essential share in the sovereignty.157

But though the people were to have "an essential share in the sovereignty," they were not to possess the entire sovereignty, but only a part of it, only a "share." Adams' proposed republican government partakes of certain qualities of monarchy and aristocracy as well as of democracy. A government set up according to his model would be a representative government of checks and balances, designed to control the natural, selfish passions of the men who would compose each branch.

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ernment. Experience has proved that no position in politics is more false than this. The ancient democracies, in which the people themselves deliberated, never possessed one feature of good government. Their very character was tyranny; their figure deformity. When they assembled, the field of debate presented an ungovernable mob, not only incapable of deliberation, but prepared for every enormity." Elliot, Debates, II, 253-254.

157 Works, VI, 415.

> A succession of powers and persons, by frequent elections, will not lessen these passions in any case, in a governor, senator, or representative; nor will the apprehension of an approaching election restrain them from indulgence if they have the power. The only remedy is to take away the power, by controlling the selfish avidity of the governor, by the senate and house; of the senate, by the governor and house, and of the house, by the governor and senate.[158]

In Adams' republican government the natural aristocrats would be represented in the senate, the common people in a house of representatives, with the executive acting as an impartial arbitrator.

Adams gave the people representation in one branch because their liberties are dependent on it.

> Americans in this age are too enlightened to be bubbled out of their liberties, even by such mighty names as Locke, Milton, Turgot, or Hume; they know that popular elections of one essential branch of the legislature, frequently repeated, are the only possible means of forming a free constitution, or of preserving the government or laws from the domination of men, or of preserving their lives, liberties, or properties in security... .[159]

But though the people would be foolish to surrender this right, it is a mistake for them to demand that a simple majority of the entire population be allowed to work its will through a single legislative house. For such a gov-

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[158] Works, VI, 57.

[159] Works, IV, 466.

ernment would lead directly to the destruction of the rights of the minority and ultimately to the destruction of all liberty, of the rights of the majority itself.

> ... if the common people are advised to aim at collecting the whole sovereignty in single national assemblies ... or at the abolition of the regal executive authority; or at a division of the executive power ... they will fail of their desired liberty, as certainly as emulation and rivalry are founded in human nature ... . in a single assembly they will act as arbitrarily and tyrannically as any despot ... a sovereignty in a single assembly must necessarily, and will certainly be exercised by a majority, as tyrannically as any sovereignty was ever exercised by kings or nobles.[160]

In a simple democracy, the majority, led by unscrupulous leaders who would pander to its lust for power and luxury,[161] and by a few influential families,[162] would trample upon the rights of the minority. All of the rights of the few -- and especially the sacred right of private property -- would suffer. The minority could not live in peace, for it would have no certainty of permanent security. Laws could be changed over night and probably would be, for the majority, or rather a few demagogues and eminent men, would have control of the entire government, of even the courts of justice, of the judges and juries themselves.

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[160] *Works*, VI, 252.

[161] *Works*, VI, 200.

[162] *Ibid.*, 192, 456-457.

> If the majority, then, must govern, and consequently often near half, and almost always a party, must be governed against their consent, it is the majority only who will remain secure out of the reach of tyranny, and free from the arbitrary disposition of any commanding power. The minority, on the contrary, will be constantly within the reach of tyranny, and under the arbitrary disposition of the majority. Nor do the minority, under such a government, "know what laws they are to obey, or what penalties they are to undergo, in case of transgression ... ."
>
> To be convinced of this, we should recollect that the majority have the appointment of the judges, who will be generally the great leaders in the house, or their friends and partisans, and even great exertions will be made to pack juries ... . as the passions and interests of the majority have no check, they will frequently make ex post facto laws ...[163]

Nicely balanced governments are rare, Adams admitted, and are difficult to preserve. But they are worth the trouble they require; for without them liberty is impossible.[164]

A balanced government composed of an independent executive, house, senate, and judiciary, therefore, was Adams' chief device for checking the majority and also for checking the minority -- the aristocratic few, the men of talents, wealth, and power.

> The rich ... ought to have an effectual barrier ... against being robbed ... as well as the poor; and this can never be without an independent senate. The poor should have a bulwark against the same dangers and oppressions; and this can never be without a house of rep-

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[163] Works, VI, 109-110.

[164] Ibid., 399.

resentatives of the people. But neither the rich nor the poor can be defended by their respective guardians in the constitution, without an executive power, vested with a negative, equal to either, to hold the balance even between them, and decide when they cannot agree.[165]

This must be done in order to protect property, for to place "unlimited or unbalanced power of disposing property... into the hands of those who have no property ..." is to commit the lamb "to the custody of the wolf."[166] But even

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[165] Works, VI, 65.

[166] Ibid., p. 280. The parallel between Adams and Fisher Ames on most of these points is striking. Ames, pouring out his vitriol, remarked on the influence of demagogues in a democracy: "The people, as a body, cannot deliberate. Nevertheless, they will feel an irresistible impulse to act, and their resolutions will be dictated to them by their demagogues. The consciousness, or the opinion, that they possess the supreme power, will inspire inordinate passions; and the violent men, who are the most forward to gratify those passions, will be their favorites." Ames, Works, II, 393.

He wrote thus on the danger to property from majority rule: "As property is the object of the great mass of every faction, the rules that keep it sacred will be annulled, or so far shaken, as to bring enough of it within the grasp of the dominant party to reward their partisans with booty. But the chieftains, thirsting only for dominion, will search for the means of extending or establishing it. They will, of course, innovate, till the vestiges of private right, and of restraints on public authority, are effaced; until the real people are stripped of all privilege and influence, and become even more abject and spiritless than weak." Ibid., p. 368.

Thus on the tyranny of the majority in a democracy: "The rage of one man will be tired by repetition of outrage, or it may be eluded by art or by flight. It seldom smites the obscure, who are many, but like a gust uproots chiefly the great trees that overtop the forest. A mobocracy, however, is always usurped by the worst men in

if there be a separation of powers in the best republican government, how are the right men to be placed in office? Since governments exist to protect human rights, and since property is a fundamental right,[167] only property owners should hold office. Accordingly Adams favored a strict property qualification for voting:

> Such is the frailty of the human heart, that very few men who have no property, have any judgment of their own. They talk and vote as they are directed by some man of property, who has attached their minds to his interest.
>
> The same reasoning which will induce you to admit all men who have no property, to vote, with those who have ... will prove that you ought to admit women and children ... .[168]

The foregoing has shown that when Adams formulated his theories of government, he had a conflict between economic classes clearly in mind, that he was deeply concerned about protecting property rights. Was this class

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the most corrupt times; in a period of violence by the most violent. It is a Briareus with a thousand hands, each bearing a dagger; a Cerberus gaping with ten thousand throats, all parched and thirsting for fresh blood. It is a genuine tyranny, but of all the least durable, yet the most destructive while it lasts." Ibid., p. 111.

[167] Works, VI, 280.

[168] Works, IX, 376. In his old age, though he still doubted the wisdom of universal suffrage, Adams admitted that it was a very difficult problem to solve and said that any party containing as many eminent men as that advocating universal suffrage was "... not to be despised, neglected, nor easily overborne." Works, X, 267-68.

conflict a purely hypothetical one, a conflict which existed in other lands and in past history, a struggle which would appear in his own country only in the future? Or did Adams observe this conflict in the America of his own day? His own writings show that the latter was the case and that he was moved -- at least partially -- to write by his recognition of the potential dangers to property inherent in the situation in America. In a letter written in 1790, he said that there was too much popular influence in America, that property rights were being violated:

> In this country the pendulum has vibrated too far to the popular side, driven by men without experience or judgment, and horrid ravages have been made upon property by arbitrary multitudes or majorities of multitudes. ... to place property at the mercy of a majority who have no property, is "committere agnum lupo."[169]

In the eleventh discourse on Davila, he called attention to the conflicts, to the "emulations," that then existed in America.[170] In a letter to Jefferson, written in 1813, he told of how he was moved to write the Discourses on Davila, by Lafayette's harangue of him, Jefferson, and John Quincy Adams one night in Paris. He was shocked at "the grossness of his ignorance of government and history, as at that of Turgot, Rochefoucauld, Condorcet, and Frank-

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[169] Works, IX, 571.

[170] Works, VI, 269.

lin."[171] When he saw the French assembly carrying out Turgot's plan for a single house government and when he saw

> ... that Shays' rebellion was breaking out in Massachusetts; and when I saw even my obscure name was often quoted in France as an advocate of simple democracy; when I saw that the sympathies in America had caught the French flame, I was determined to wash my hands as clear as I could of all this foulness ... .[172]

In a letter to Benjamin Hichborn, written in 1787, he told of how Shays' Rebellion disturbed him and was the chief motivation of his political discourses:

> The Commotions in New England alarmed me so much that I have thrown together some hasty speculations upon the subject of government ... . If the general spirit of those papers is not approved in our country, my career in political life will be very short.
> ... Mobs will never do to govern States ... . I was as sensible of it in 1770 as I am in 1787. To talk of liberty in such a state of things! Is not a Shattuck or a Shays as great a tyrant, when he would pluck up law and justice by the roots, as a Bernard or a Hutchinson, when he would overturn them politically?[173]

Shays, the natural aristocrat, the demagogue, was a terrifying reality to Adams.

Adams and his contemporaries who drew up the Constitution, then, had common fears of demagogues and the power

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[171] Works, X, 53.

[172] Works, X, 53-54.

[173] Works, IX, 551.

of the majority. They feared that property would not be safe in a society governed entirely by the will of the majority; nor would such a government be stable, for an unchecked democracy soon changes itself into an aristocracy or some form of despotism. To prevent this they designed a balanced government, with certain elements -- an executive, a senate, a judiciary -- checking the more democratic house. They also favored a property qualification for suffrage,[174] but none was included in the new Constitution lest large groups of people be alienated from the new government.

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[174]The stress laid on a property qualification by the Founding Fathers was perhaps the result of a reaction on their part to the general movement of the times towards a broadening of the suffrage. This movement had begun in 1775 and 1776, when most of the new state governments were set up. The desire of the hitherto voteless mechanics, shopkeepers, tenant-farmers, servants, and unnaturalized foreigners for the right of suffrage was "... among the springs which gave the revolutionary movement its irresistible power." Allan Nevins, The American States During and After the Revolution, New York, 1924, p. 96. Although property qualifications were still the rule in the new state constitutions, many states reduced the requirements drastically in 1775 and 1776. e.g.: in New Hampshire before the revolution only those possessing fifty pounds could vote; but under the new constitution every taxpayer was allowed to vote. Ibid., pp. 10, 90. In the revised constitution of 1783 anyone paying a poll tax could vote. In New York the new constitution allowed "... every patriot freeman in New York city and Albany, and every freeholder outside ..." to vote. Ibid., p. 132. In Pennsylvania, Delaware, North Carolina and Georgia, the new constitutions gave the right to vote to all taxpayers. In most states, however, possession of considerable property was still required to sit in the legislature or to vote for senators or for governor. Ibid. Nevertheless the irresistible tide of popular control had set in.

CHAPTER III

EARLY LITERARY EXPRESSIONS OF THE FEDERALIST CRITICISMS OF MAJORITY RULE

The first expression in literature of the conservatives' fear of the newly awakened popular majority was The Anarchiad, a mock-heroic political satire. A result of the same social and political forces that produced the treatises of Adams and the Constitutional Convention, it was written in collaboration by several of the Connecticut Wits. David Humphreys, who had become familiar with current political satire in England, with The Rolliad in particular,[1] is given credit for planning and inspiring the work, but Dr. Lemuel Hopkins is considered chiefly responsible for its composition. In addition, John Trumbull and Joel Barlow are thought to have had a hand in it.[2] Like Adams and the delegates to the Constitutional Convention, the authors of The Anarchiad, alarmed by the popular agitation for paper money and by Shays' and Shattuck's rebellions, were determined to enter the battle against the forces of anarchy and chaos and to strike a blow for the cause

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[1] The Connecticut Wits, ed. V. L. Parrington, New York, 1926, p. 428.

[2] Ibid., xxxi.

of order and security. They struck it by giving poetical expression to the sentiments of the stubbornly conservative aristocratic class to which they belonged and which dominated Connecticut toward the end of the eighteenth century.[3] They were among the first to expose the dangers of democracy, for The Anarchiad came out before Adams' Defense of the Constitutions was published and long before the Federal Convention was called. It was first published in The New Haven Gazette and The Connecticut Magazine from October 1786 to September 1787.

The poem is in the conventional style of eighteenth century English satire and was modelled closely on Pope's Dunciad. The title -- The Anarchiad -- the heroic couplets, the movement of the lines, the diction, the personifications all recall Pope. The similarity is so striking that the authors, in their introduction, in which they relate how they unearthed the ancient manuscript of the poem, say that their discovery suggests that Pope modelled his Dunciad on the poem which is to be presented and even plagiarized some couplets from it.[4] The alleged ancient author

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[3]"For generations the snug little commonwealth had been the home of a tenacious conservatism, that clung to old ways and guarded the institutions of the fathers with pious zeal. ... A small inter-locking directorate controlled religion, business, and politics." Ibid., p. xii.

[4]Ibid., p. 430.

of The Anarchiad sees far into the future in a vision and beholds the mob violence under which Massachusetts suffered after the Revolution.

> In visions fair the scenes of fate unroll,
> And Massachusetts opens on my soul;
> There Chaos, Anarch old, asserts his sway,
> And mobs in myriads blacken all the way:
> See Day's stern port -- behold the martial frame
> Of Shays' and Shattuck's mob-compelling name:
> See the bold Hampshirites on Springfield pour,
> The fierce Tauntonians crowd the alewife shore.
> O'er Concord fields the bands of discord spread,
> And Wor'ster trembles at their thundering tread:[5]

The mob, composed of ex-criminals and the worst elements of society, levels its attack on the courts and destroys every vestige of law and order, every protection to individual rights.

> LO, THE COURT FALLS; th' affrighted judges run,
> Clerks, Lawyer, Sheriffs, every mother's son.
> The stocks, the gallows lose th'expected prize,
> See the jails open, and the thieves arise.
> Thy constitution, Chaos, is restor'd;
> Law sinks before thy uncreating word;
> Thy hand unbars th' unfathom'd gulf of fate,
> And deep in darkness 'whelms the new-born state.[6]

These are the results of Old Anarch's reign, who, driven from eastern regions of the earth, retreats to the western

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[5] Ibid.

[6] Ibid.

world to gain a new empire under the name of Democracy. Beelzebub makes a speech in which he attempts to persuade old Anarch to come over and help him in Macedonia, since his projects are thriving so in Massachusetts and Rhode Island. He addresses Anarch:

> Survey the State, behold the flame that draws
> Chiefs, mobs, conventions, to support thy cause.
> See where the frogs' loquacious realms extend,
> Instructions on their deputies attend,
> O'er all the east new fangled magi rise,
> Join croaking choirs and boast the name of wise.
> The north by myriads pours her mighty sons,
> Great nurse of mobs, of bankrupts, and of duns ... .[7]

One of the ways in which the factious majority works its injustice is by the issue of paper money and by stay and tender laws. In the twenty-third book of The Anarchiad, which attacks the issuing of paper money as ill-advised, injurious, and unjust, the faithless, unscrupulous Americans are contrasted with the honest British, who, though unenlightened by democratic principles, though living in bondage under a king, nevertheless place the general above the individual good, keep their word, and hold a contract sacred.

> Lo, the poor Briton, who, corrupted, sold,
> Sees God in courts, or hears him chink in gold;
> Whose soul, proud empire oft has taught to stray ...
> .....
> In rags and tender-acts he puts no trust;

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[7]Ibid., p. 431.

> But in the public weal his own forgets,
> Finds heaven for him who pays the nation's debts ...
> .....
> Not so, Columbia, shall thy sons be known
> To prize the public weal above their own;
> In faith and justice least, as last in birth,
> Their race shall grow, a by-word through the earth.
> Long skill'd to act the hypocritic part,
> Grace on the brow, and knav'ry at the heart,
> Perform their frauds with sanctimonious air,
> Despise good works, and balance sins by pray'r --
> Forswear the public debt, the public cause;
> Cheat heaven with forms, and earth with tender-laws,
> And leave the empire, at its latest groan,
> To work salvation out by <u>faith alone</u>.[8]

In later parts of the poem, the same theme -- the evils of popular sovereignty -- is developed in greater detail. In one of Anarch's speeches, an idea that Adams emphasized is expressed in verse form -- the instability of simple democracy, which results in such confusion, anarchy, and insecurity that an absolute monarch naturally arises to restore order.

> Here shall I reign, unbounded and alone,
> Nor men, nor demons, shake my baseless throne
> Till comes the day -- but late, oh, may it spring --
> When their tumultuous mobs shall ask a king;
> A king in wrath, shall heaven, vindictive send,
> And my confusion and my empire end.[9]

The agrarian majority, the mobs of Shays and Shattuck, are accused of being the foes of a united nation, of a vig-

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[8] <u>Ibid</u>., pp. 436-437.

[9] <u>Ibid</u>., p. 438.

orous government, of impartial law and justice. The heroes of the Revolution suffered and bled in vain for all these blessings.

> For, see! proud Faction waves her flaming brand,
> And discord riots o'er the ungrateful land;
> Lo! to the north, a wild, adventurous crew,
> In desperate mobs, the savage state renew;
> Each felon chief his maddening thousands draws,
> And claims bold license from the bond of laws;
> In other States the chosen fires of shame
> Stamp their vile knaveries with a legal name;
> In honor's seat, the sons of meanness swarm,
> And Senates base the work that mobs perform;
> To wealth, to power, the foes of union rise,
> While foes deride you, and while friends despise.[10]

The oppression and misery under absolute monarchs and other tyrants is painted, then the tyranny of the majority under democracy:

> Nor less abhor'd, the certain woe that waits
> The giddy rage of democratic States,
> Whose pop'lar breath, high-blown in restless tide,
> No laws can temper, and no reason guide:
> An equal sway, their mind indignant spurns,
> To wanton change, the bliss of freedom turns;
> Led by wild demagogues, the factious crowd,
> Mean, fierce, imperious, insolent and loud,
> Nor fame, nor wealth, nor power, nor system draws --
> They see no object, and perceive no cause;
> But feel, by turns, in one disastrous hour,
> Th'extremes of license, and th'extremes of power.[11]

The evils of pure democracy presented in this passage -- lawlessness, disregard for individual rights, "wanton

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[10] Ibid., p. 458.

[11] Ibid., p. 461.

change," "wild demagogues," "the factious crowd" ignorant of ends, means, and causes -- were common stock among the Federalists of the day. They appeared in the Constitutional Convention debates, in The Federalist, in the works of Adams, and were to be repeated by conservative politicians and men of letters for over half a century. Brackenridge, Joseph Denny, Irving and Paulding, Cooper, Kennedy, and Orestes Brownson were among those who were later to echo and expand these ideas. In Book XXIII of The Anarchiad, Anarch and Hesper, "guardian of the clime," carry on a dialogue in the course of which Hesper invokes "Blessed Independence ... Sister of Freedom" to inspire "other Greenes and Washingtons to arise" and save their country by ending mob rule and faction. He then addresses Anarch.

> Yes, they shall rise, terrific in their rage,
> And crush the factions of the faithless age;
> Bid laws again exalt th'imperial scale,
> And public justice o'er her foes prevail;
> Restore the reign of order and of right,
> And drive thee, howling, to the shades of night.[12]

Thus the authors of The Anarchiad expressed their faith in the youthful nation. And it was not misplaced, for only two years later the new federal government was established, "Old Anarch" was exiled, and "the reign of order and of right" was restored.

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[12] Ibid., p. 439.

Another flower in the literary burgeoning of Connecticut conservatism was The Echo, a gayer, lighter, wittier satire than The Anarchiad. It was written by Richard Alsop and Theodore Dwight, except for small parts by Hopkins, and was first published in The American Mercury in twenty numbers from 1791 to 1805. In 1807 it was collected and published in a slightly abridged form. Begun as merely a versified burlesque of the florid, bombastic style of current newspapers, it was soon adapted to the satire of what its authors considered political errors and absurdities. Dwight and Alsop's method was to quote a passage from a contemporary newspaper -- in the political numbers of The Echo frequently from a speech or published letter -- and then to echo it in a ridiculous verse parody. Hence the title of the poem, The Echo. Among the victims of its more or less good natured satire were such prominent Democrats as Jefferson, Governor Hancock of Massachusetts, Senator Seton Thompson Mason of Virginia, and Hugh Henry Brackenridge.

Dwight and Alsop state their motives for writing in the preface to the 1807 edition. Disgusted by the excesses of the French Revolution, they wished

> ... to contribute their efforts in stemming the torrent of jacobinism in America. ... They therefore, pro-

ceeded to attack, as proper objects of satire, those tenets, as absurd in politics as pernicious in morals, the visionary scheme of equality, and the baleful doctrine that sanctions the pursuit of a good end by the most flagitious means.[13]

The fourth number of The Echo is the first which attempts to carry out this purpose. In it the perversion of the principle of political liberty by the democrats is exposed. A passage in praise of democratic liberty from The Boston Argus of August 5, 1791, is quoted.

"Liberty, that goddess which is destined to render happy our world, was born yesterday; she now lies smiling in her cradle. The angels of benignity attend her infancy, and the face of nature is changed into joy and festivity. ... She dwells on the principle of NATURAL EQUALITY.[14]

Then, in their parody, the authors strongly imply that it is precisely because of the pernicious democratic principle of equality, which gives every man equal political rights, that this infant will grow to be a monster which will destroy all liberty.

> When, to our joy supreme, on yester morn,
> A full twelve-pounder -- LIBERTY was born.
> In swaddling clothes they pinn'd the baby up
> And laid her smiling in a chicken-coop;
> While mother MOB, that steady wet-nurse, press'd
> The sturdy infant to her milky breast ...[15]

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[13] The Echo with Other Poems, New York, 1807, p. iv.

[14] Ibid., p. 5.

[15] Ibid., p. 6.

The illustration accompanying these lines in the 1807 edition throws some light on their meaning. Mother Mob's breasts are labelled rum and whiskey, and while she suckles the lusty infant, statute books burn on the floor. Democratic liberty, therefore, since it is the result of the mob spirit and panders to the basest passions, produces only lawlessness, violence, and injustice, the very antitheses of true liberty. Democrats claim that equal rights and the rule of the people will safeguard society against oppression. But this is false, for liberty under democracy is only license. This idea is illustrated in the twelfth number of The Echo, in which there occurs an ironical defense of the French. The critics of the French jacobins are

> The foes of every native right of man --
> The right of doing whatsoe'er he list,
> By secret stratagem or force of fist... .[16]

The result of this license is worse oppression than ever could occur under an aristocracy or monarchy. This idea and the absurdity of the doctrine of natural equality are fully developed in the long tenth number of The Echo, written by Alsop. In this issue Alsop ridicules a passage from The Virginia Gazette of December 6, 1792, in which

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[16] Ibid., p. 85.

the author rejoices that the people of Virginia voted for Clinton for Vice-President because he is a true republican and reprobates the principles of Adams. The same author defends the French jacobins as having dethroned tyranny, monarchy, aristocracy, priestcraft.

Before dealing with the principal object of his satire -- the pernicious doctrines of Jacobinism -- Alsop speculates on why there are so many Democrats, or followers of Jefferson, in Virginia, where "the manners of the Planters are naturally and habitually Aristocratic."[17] He suggests that since the first families of Virginia are descendants of Pokahontas and since the whites always treated the Indians as inferiors, many of the planters are naturally democratic levellers. Furthermore the Indians always "preserved the most perfect Democracy in their Governments."[18] Naturally their descendants would want to preserve these ancient customs.

After this good-natured dig, Alsop attacks the doctrine of Equality. Those who preach it are insincere dema-

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[17] Ibid., pp. 63-64, n.

[18] Ibid. Alsop and Dwight used the terms "Democracy" and "Democrats" somewhat ambiguously. By "Democrats" they generally meant the anti-Federalists and by "Democracy" their party as well as the principles of popular government which they espoused.

gogues who seek merely to cajole the people, to flatter "his Majesty of Mobs" to further their own selfish political ends. The insincerity and demagoguery of the Democratic leaders, the chieftains of the newly formed anti-Federalist party, is patent because of the hue and cry they raise over the writings of Adams. Alsop puts the following words into the mouths of the sons of Virginia, who rise and follow behind Clinton:

> We urge illustrious Adams on to fate;
> Condemn his principles, his book detest,
> Misquote his sentiments, his conduct wrest,
> Charge him with loving what ourselves we love,
> Charge him with hate of what we disapprove,
> And load with vilest terms of reprobation
> The very phantom of our own creation.
> The monocrats, aristocrats lie low,
> High-flying mushrooms sink in deadliest woe ... .[19]

Only ignorant cobblers, tinkers, and negroes really believe in equality, whatever the Democrats may say and do, no matter how many Equality Balls they may give for negroes.

> While joyous sing the people's friends and prance,
> And treat the Negroes to a royal dance,
> And loud to Anarchy their voices raise,
> In hallelujahs and in hymns of praise,
> To the sweet Tune of <u>Freedom born anew</u>;
> That Tune so charming, and so novel too,
> That Tune by tinkers sung, by cobblers lov'd... .[20]

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[19] <u>Ibid</u>., p. 65.

[20] <u>Ibid</u>., p. 66.

In a footnote Alsop presents an extract from The American Mercury of January, 1793, describing and ridiculing the Equality Ball given by Governor Hancock of Massachusetts:

> Now, prompt to assert the rights of man,
> On Nature's most extensive plan,
> Behold him to his splendid hall,
> The noblest sons of Afric call:
> While as the sable bands advance,
> With frolic mien, and sportive dance,
> Refreshing clouds of rich perfume
> Are wafted o'er the spacious room.
> With keen delight the Sage surveys
> Their graceful tricks and winning ways;
> Their tones enchanting raptur'd hears,
> More sweet than music of the spheres,
> And as he breathes the fragrant air,
> He deems that Freedom's self dwells there.
> While Cuffey near him takes his stand,
> Hale-fellow met, and grasps his hand --
> With pleasure glistening in his eyes,
> "Ah! Massa Gubbernur! he cries,
> Me grad to see you, for de people say
> You lub de Neegur better dan de play."[21]

Such are the type of people who wield sovereign power under democracy. Democrats rely on such ignorant sections of the populace as the negroes to maintain political power, for their principle is

> That the best way a Government to raise
> Is to destroy its pillars and its base ...[22]

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[21] Ibid., pp. 65-66.

[22] Ibid., p. 68.

But since this policy would abolish stable laws, courts, and the leadership of the natural aristocrats, which make up the pillars and base of government, a condition of anarchy would soon result, Anarchy to whom the negroes raised their voices "in Hallelujahs and in hymns of praise" at the Equality Ball:

> Soon, very soon, will every open'd eye
> The fatal issue of your schemes espy;
> While in equality our days shall flow,
> And licence unrestrain'd its choicest gifts bestow.[23]

A humorous illustration of the evil of the doctrine of equality occurs in Echo XII, in which the French are ironically defended. They have been unjustly called regicides and rogues

> Merely, because by soft compassion led,
> They've taken off their hapless monarch's head;
> From all his woes a kind release have given,
> And sent him up an extra post to heaven --
> To tell their Maker they intend to go
> Where all are equal in the world below.[24]

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[23] Ibid., p. 11.

[24] Ibid., p. 85. In The Political Greenhouse, a verse satire published in Hartford in 1799, Alsop reviewed the ruins wrought by the French Revolution and the Napoleonic conquests and attacked Jefferson and the "Jacobins." W. B. Otis, American Verse 1625-1807, A History, New York, 1909, p. 113. For a general treatment of anti-Jefferson satire see pp. 112-123. One such work was a mock-heroic satire by Brockholst Livingston, entitled Democracy and pub-

Such is the impious disregard of democrats for moral principles, for the divine will.

The fruits of this false equality, of rule by the majority, are to be seen in revolutionary France. In an excoriating indictment Alsop reveals the crimes committed by the jacobin leaders in the name of democracy.

> The Jacobins, once more I say, are good,
> Staunch, noble fellows, fond of letting blood --
> The Jacobins -- I dwell upon the name,
> My admiration and my homage claim --
> To wond'ring nations do they not display

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lished in 1790. This work contained all the stock objections to democracy: it is rule by the factious, bankrupt, and noisy throng, it is chaos, anarchy, and faction in disguise. Democracy, an Epic Poem, in The Magazine of History with Notes and Queries, XXI, No. 4 (1922) Extra Number, No. 84, pp. 181-199. In spite of these Federalistic sentiments, however, Livingston eventually cast in his lot with Jefferson and was appointed by him to the Supreme Court in 1806.

It should not be forgotten that there was also considerable anti-Federalist political satire at this time. Cf. Otis, op. cit., pp. 108-111. These satires supported popular government and were as extreme in their attacks on the Federalists as any Federalist satirist was in his attack on the Democrats. The author of Aristocracy, another mock-heroic satire, warned that "... a dangerous coalition exists ... to destroy the general influence of the people; or at least to modify it ... as may be most advantageous to the personal aggrandizement of the coalition." Aristocracy, an Epic Poem, Philadelphia, 1795, iii. The Dangerous Vice and The Demos in Council were vitriolic personal attacks on John Adams. Otis, op. cit., pp. 108-110. The Hamiltoniad, published in 1804 soon after the death of Hamilton, was full of scurrilous personal vituperation against Hamilton. Its author, John Williams, admitted that Hamilton was a remarkable man but accused him of being "the founder of the Royal Faction of this country." Otis, op. cit., pp. 110-111.

> A noble generous spirit every day?
> With much politeness and with equal skill,
> Do they not torture whom they mean to kill?
> And fir'd with zeal to render man humane,
> Bear high on pikes the heads of children slain?[25]

Alsop continues sarcastically to list their accomplishments for civilization:

> Have they not heav'd Oppression's iron yoke
> From off the necks of thirty million folk?
> With strength Sampsonian broke the chains of power ...[26]

But this freedom from oppression is illusory. It is only a change of oppressions, for democratic liberty nurtures faction:

> Have they not fill'd Old Freedom so with fire
> That the good Dame is ready to expire?
> And e'en at length have worn her bellows out
> In blowing Faction's flame the world about?[27]

The meed of fair democratic freedom, Alsop implies, is anarchy -- violence, insecurity, injustice.

The last principal anti-democratic view to be found in The Echo occurs in number XVIII, in which the Federalistic concept of the Senate is presented indirectly. In this number a letter printed in The Aurora, one of the chief Anti-

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[25] Ibid., pp. 68-69.

[26] Ibid., p. 69.

[27] Ibid., p. 70.

Federalist papers, is subjected to ridicule. Written by Senator Thompson Mason of Virginia, the letter requests that The Aurora print a correct version of Jay's treaty with Great Britain in order that the people may be correctly informed on it for public discussion. The Senator says that the information has already been improperly withheld from the people and that he is enclosing a correct copy of the important document.

First lampooning Mason as an incompetent, insignificant, inarticulate party tool, the authors of The Echo then leap upon the idea that the Senate should publish its proceedings or even the subject of them:

> No haughty Senate, by its tyrant laws,
> Shall longer lock our democratic jaws;
> Perish their secrets -- laws were made for fools,
> We laugh to scorn the Senate and its rules.
> In pure Republics secrets ne'er exist,
> Knowledge like wind should blow where'er it list,
> No man can claim a right exempt to know;
> Science and Truth in common streams should flow...
> .....
> Hard, very hard would be the poor man's lot,
> If every one might hoard up all he'd got,
> From whence no common man supplies may draw,
> Without transgressing some despotic law,
> And thus establish, spite of all our pains,
> A dreadful aristocracy of brains.[28]

From this short passage a picture of the kind of Senate which true Federalists yearned for as a check against the

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[28] Ibid., pp. 129-130.

majority can easily be constructed. It was an independent body composed of men of wealth and talents -- the "natural aristocrats" of Adams -- who deliberated in secret over matters far beyond the ken of the common man. Alsop and Dwight's concept of the Senate was truly Hamiltonian.

A further implication of Echo XVIII is that the Anti-Federalists -- demagogues that they were -- wanted the treaty made public so that they could arouse the mob against it and defeat it. They had special faith in Boston, the breeding place of democratic faction and rioting, to aid in accomplishing this end:

> But chief on Boston's sons our hopes rely,
> There Expectation turns her anxious eye;
> There Faction hatches first her glorious brood,
> There Riot finds perpetual stores of food,
> There wild Disorder all her poison sheds,
> There Insurrection lifts her hundred heads.[29]

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[29]Robert Treat Paine, the poet-laureate of the "tie-wig" school, belongs to the same literary category as the Connecticut Wits. A Boston dandy and ultra-Federalist, Paine wrote poems and orations full of anti-democratic invective on nearly every possible occasion. In a "Song written for and sung at the Anniversary of the Massachusetts Charitable Fire Society," May, 1802, he asked

> "What arm a sinking State can Save,
> From Faction's pyre, or Anarch's grave?"

And in his refrain he answered that the rule of New England could save America from such a fate. New England rises and

> "the federal Sun returns ...
> And thou, pale orb of waning light,
> Democracy, thou changeling Moon,

The Connecticut Wits feared democratic government, then, because they believed the people to be ignorant, passionate, changeable, gullible, disrespectful of individual and minority rights, easily influenced by demagogues, easily roused to violence. The wits were deeply concerned over the economic implications of democracy. Their reiteration of the epithet "faction," a word which in their day indicated an interested economic-political group, is evidence of this. A faction could swing the ignorant majority to its side, or the majority itself could compose a fac-

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Art doomed to wheel thy maniac flight,
Unseen amid the cloudless Noon."
The Works, in Verse and Prose, of the Late Robert Treat Paine, Jun. Esq. ... Boston, 1812, p. 252.

In an "Adress, written for the Carriers of the Boston Gazette, January 1, 1802," he lamented the Federalist political defeat, saying that the sun had gone to shine on the South Pole. A dreary season then settled on America:

"In trade's great toe it sticks a splinter,
And gives us peace, democracy and winter;
.....
With banded hordes it fills our public roads...
Capacity it gives to every rogue,
And finds certificate of birth in -- brogue;
Distinction levels, all allegiance blends,
And whiskey cits, from bogs, to congress sends;"
Works, p. 294.

In "An Oration, written at the request of the young men of Boston, and delivered, July 17, 1799, in commemoration of the dissolution of the treaties and consular convention, between France and the United States of America," he railed against jacobinism and democracy: "That a free government should always be corroded by a desperate faction is as natural, as that the luxuriance of the soil should be known by the rankness of its weeds; that the majestick oak should be entwined by the baleful ivy... ." Ibid., p. 322.

tion. The paper money and tender laws against which Humphreys and Hopkins inveighed in The Anarchiad were the result of faction, they believed, and they opposed these laws because they had a seriously adverse effect on property rights and contracts involving money. That the Connecticut Wits and the class for which they were spokesmen feared an invasion of property rights by the majority is also evident from their complete lack of sympathy with the confiscation and division of the estates of the nobles by the majority during the French Revolution. They associated the infringement of property rights as well as generally bad government with majority rule.

II

Another work in the same literary and political tradition as The Anarchiad and The Echo was Democracy Unveiled; or Tyranny Stripped of the Garb of Patriotism, written by Thomas Green Fessenden under the pseudonym of Christopher Caustic, L. L. D. Two editions of it were published early in 1805, but Fessenden soon expanded it, and it was published in a diluted form late in the same year. Written as an attack on Jeffersonian Democracy, or Anti-Federalism,

Democracy Unveiled was pure partisan satire, or more accurately, partisan pamphleteering. When Fessenden used the term "Democracy" he meant the Jeffersonian party and its principles. Since these principles -- chiefly the doctrine of natural equality and the majority principle -- were democratic, the unwary reader might easily confuse the party with the set of principles. Fessenden of course hated Jefferson and his supporters because they were democratic and consequently attacked their party. He made no clear distinction between the party and the set of political principles which are called democratic, because at the time no such distinction was necessary. The Federalists were the aristocratic party and the Democratic-Republicans, generally, the democratic. So that it was possible to attack both the Democratic Party and the democratic system of government at the same time. The two were so inextricably intertwined that an attack on the one inevitably involved an attack on the other. For democracy was then one of the chief issues between the two parties, as it has not been in America since the Civil War. Hence Fessenden simultaneously attacked the Anti-Federalists and the democratic principles which they held. In this thesis "Democracy" will be used to designate the Jeffersonian party, "democracy" to

designate government by the many, in the interests of the many. The Jeffersonian party, of course, generally held these principles of government.

Brought up in the Federalistic environment of New England, the son of a New Hampshire minister, Fessenden was anti-democratic and anti-Jeffersonian to the core. He attended Dartmouth College, studied law, and contributed to The Farmer's Weekly Museum, a staunch Federalist sheet, when it was under the editorship of Joseph Dennie. His association with Dennie was a fitting preparation for one who was to give expression to the partisan vitriol and vituperation that is contained in Democracy Unveiled. The publication of this poem was not Fessenden's only effort to enlighten the public and expose the perfidies of the Jeffersonian Democrats, however. For a year -- from August 1806 to August 1807 -- he edited and published The Weekly Inspector, a paper which was merely "a continuation of the stuff of Democracy Unveiled in a slightly different form."[30] It was in 1807, when he was struggling to make a success of his paper, that Fessenden published a mild criticism of the policy of the authors of Salmagundi and as a result became the butt of the good natured jibes

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[30]Porter G. Perrin, The Life and Works of Thomas Green Fessenden 1771-1837. University of Maine Studies, 2nd Series, No. 4, p. 10.

of Irving and Paulding, who called him Dr. Costive, and his sheet a weakly paper. Its motto, taken from Hamilton, gives the essence of Fessenden's political opinions:

> Of those men who have overturned the liberties of republics, the greater number have begun their career by paying an obsequious court to the people -- commencing demagogues and ending tyrants.[31]

This is the theme of Democracy Unveiled as well.

Fessenden's poem is in the style of Butler's Hudibras but lacks the brilliance and restraint of its prototype. It is mere scurrility from beginning to end. In his introduction to the 1805 edition, Fessenden professes an unbiased concern for the national good as his sole motive for writing:

> ... my motives arise from a deep conviction, that our civil and political rights -- ALL that can stamp a value on Society, are menaced by bad men now dominant, and bad principles, inculcated by demagogues and philosophists ... . A wish to be serviceable to my country is paramount to every other consideration.[32]

Yet he makes American politics a simple matter of black and white. The Democrats are all villains, the Federalists good men and true. A continuation of Jefferson's policies

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[31] Ibid., pp. 109-110.

[32] Democracy Unveiled; or Tyranny stripped of the Garb of Patriotism. By Christopher Caustic, L. L. D., Boston, 1805, p. v.

will bring the nation to its ruin; only a return to Federalism can save it. So Fessenden resolves to expose the errors and arts of the demagogues in office, many of whom "... are stained with crimes of the deepest dies «sic», and instead of being placed at the head of government ... deserve to be arraigned at the bar of justice."[33]

Democracy Unveiled is more a political pamphlet than a verse satire, for more space is taken up by Fessenden's footnotes than by his verses. Many of the pages contain only two lines of verse, with the rest of their space occupied by lengthy explanations or supporting evidence in the notes. Thus there can be no continuity in reading either the prose or the verse. The reader has to shift back and forth constantly from one to the other. This defect was cleverly parodied by Irving and Paulding in Salmagundi.

The first canto of Democracy Unveiled, "The Tocsin," makes general charges against the Democrats and their principles. The followers of Jefferson are scoundrels and demagogues, ex-Tories, enemies of both law and order and of a federal government. Tom Paine is a "demoralizing scribbler."[34] Canto II, "Illuminism," traces the origin

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[33] Ibid., vi.

[34] Ibid., p. 4, n.

of democratic ideas to illuminized Freemasonry and to such French thinkers as Diderot and Rousseau, whom Fessenden calls atheists, materialists, determinists, and moral relativists. Canto III, "Mobocracy," shows how Jefferson and Paine brought these ideas to America. Canto IV, "The Jeffersoniad," is a lampoon of President Jefferson, in which he is accused of seduction and cowardice. Canto V, "The Gibbet of Satire," attacks Democrats of less importance. And Canto VI, "Monition," gives specific advice as to how to end existing evils, the chief suggestion being that Americans amend their lives and return to the fold of the Federalist Party.

But in the course of these partisan objurgations against Jefferson and his supporters, Fessenden makes many implicit and explicit criticisms of majority rule. His first criticism of it is his most direct and most important. It is the fundamental objection which appears in all conservative writers from the seventeen-eighties to 1942, that the majority lacks respect for individual rights and therefore is tyrannical. Early in Canto I Fessenden declares his enmity to those who in the name of the majority infringe on minority rights:

> Those who assume, at Faction's call,
> A <u>right</u> t'infringe on rights of all,

Who swear all honesty a hum
Who rise because they are the scum,

May hide their heads, for I determine
To set my foot upon the vermin ...[35]

In a footnote Fessenden gives information which clarifies his meaning more fully. By "faction," in this context, he means a majority.

See a charge delivered to the Grand Jury in Pennsylvania by the Honorable Alexander Addison, in which the distinction between liberty and licentiousness, the dangers to be apprehended from the tyranny of the MANY, ever more dreadful than that of the FEW, are pointed out in a perspicacious and masterly manner.[36]

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[35] Ibid., pp. 5-6. "Factions" were one of the principal bugbears of the times, especially among the Federalists. Washington warned against them in his Farewell Address, in which he urged a respect for all laws but in particular for the Constitution. All obstructions to the execution of the laws are pernicious, he admonished. "They serve to organize faction, to give it an artificial and extraordinary force -- to put in the place of the delegated will of the Nation, the will of a party; -- often a small but artful and enterprizing minority of the community ... However combinations or associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious, and unprincipled men will be enabled to subvert the Power of the People and to usurp for themselves the reins of Government; destroying afterwards the very engines, which have lifted them to unjust dominion." The Writings of George Washington, ed. W. C. Ford, XIII, 298-299.

[36] Ibid. Albert J. Beveridge in his Life of John Marshall has this to say of Addison: "Alexander Addison, the presiding judge of one of the Pennsylvania State Courts, was another Federalist Judge whose judicial conduct and

Another stock objection which Fessenden makes to majority rule is that it soon leads to anarchy and slaughter, then to despotism under a tyrant like Napoleon.[37] Democracy leads to anarchy because the demagogues who preach it, inspired by the primitivism of Rousseau, "the profligate wretch,"[38] are the opponents of law and order and would

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assaults from the bench upon democracy had helped to bring courts into disrepute. Some of his charges to grand juries were nothing but denunciations of Republican principles." In a footnote Beveridge says, "These charges were, in reality, political pamphlets. They had not the least reference to any business before the court and were no more appropriate than sermons." The Life of John Marshall, 4 vols. Boston and New York, 1916-1919, III, 46-47.

Judge Addison's speech of defence during his trial before the Senate of the State of Pennsylvania in 1803 gives a good sample of his political ideas, especially on majority rule and sovereignty. "For their own good it is necessary ... that restraints be laid upon the people, as on every branch of government. The people are liable to hasty passions and temporary delusions, as inimical to their true interests, as the worst designs of their worst enemies.

"Wherever the whole sovereignty is vested in one man, or in one body of men, the Government is arbitrary. It is not the individuality of the person who exercises the whole sovereignty, but the union of all power, that constitutes an arbitrary government ... whether this power be exercised by one, by many, or by the whole people." Trial of Alexander Addison, Esq. ... Lancaster, Pa. 1803, pp. 107-108. (The speech of defense is in an appendix following page 123 of the rest of the text, and is numbered from page 101.)

[37] Democracy Unveiled, p. 53.

[38] Ibid., p. 19, note.

give the mob free rein in order to achieve their ulterior ends. Rousseau believed that all coercion, all legal restraints were bad,

> That all refinement did but go
> To alter nature's simple plan,
> And scoundrelize the creature man ...
> .....
> Ev'n took it in his crazy noddle,
> A savage was perfection's model;
> And nature without cultivation,
> The ne plus ultra of creation.[39]

Rousseau looked forward to a happy day when man would be governed by "social feelings ... without the tyranny of law."[40] Democracy then, in its hostility to law, is allied to primitivism and would soon lead to savagery. To illustrate this Fessenden quotes a passage from Guthrie's Tour Through the Taurida or Crimea, in which the author refutes the idea that pastoral, nomadic people are peace-loving and virtuous, and denies that savage man is good. Then Fessenden adds his own comments.

"We find, however, that he is always mild, humane, and rational, in proportion to his advancement in civilization; although even that seems to have its limits, after which he again becomes a savage. OF THIS WE HAVE A RECENT INSTANCE IN THE MOST HIGHLY POLISHED NATION IN EUROPE, DESTROYING ALL HUMAN AND DIVINE INSTITUTIONS."

The state of society which is here described, is precisely that which Democracy let loose, would introduce

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[39] Ibid., pp. 21-22.

[40] Ibid., p. 23.

in this country. But our most refined Democrats appear to have a wish to save the intermediate stages which the French have passed; and, by "Destroying all human and divine institutions," step into a state of nature all at once.[41]

Later in Democracy Unveiled, Fessenden criticises the Democratic ideas that the people are benevolent and if left to their own devices without the restraints of laws, a felicitous state would result. In reality a simple democracy, without checks and balances, would soon lead to savagery. "A purely Democratic government would soon be a savage state."[42]

The French Revolution is a horrible example of the woes resulting from simple democracy, Fessenden warns, and American Democrats would go even farther than the French. But bad enough examples of the fruits of democracy exist right in America. Imported French ideas were largely responsible for the Whiskey Rebellion, for although a native, true liberty existed in America already,

> Still Demo's swore they'd have the frantic
> Kind manufactur'd o'er the Atlantic,
> Such as our Secretary well knows
> Suits whiskey insurrection fellows.[43]

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[41] Ibid., pp. 22-23.

[42] Ibid., p. 135, n.

[43] Ibid., p. 58.

In a footnote Fessenden informs the reader that the "Secretary" referred to is Albert Gallatin, Secretary of the Treasury under Jefferson, who played an important part in the whiskey insurrection. Gallatin is typical of the kind of "foreign convict" that has been elevated to high station by Jefferson, Fessenden implies.[44]

Another result of democracy, he continues, has been the unwillingness of people to shoulder the burden of taxation necessary to pay for the freedom for which they fought so bravely and unselfishly.

> Now, certain causes, most untoward,
> Prepar'd the people to be froward;
> Form'd many plausible excuses
> For mobocratical abuses.[45]

The untoward causes were the end of the war and the mountainous debt that it left. Massachusetts alone was in debt one million three hundred and fifty thousand pounds at the end of the Revolution.[46] "The mobocratical abuses" to which Fessenden refers were Shays' and Shattuck's rebellions and other popular movements against taxes and the fulfillment of contracts, which, he claims, were the inevitable result of democracy -- or mobocracy, which he considered synonymous.

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[44] Ibid., p. 59. Gallatin was a native of Geneva, Switzerland.

[45] Ibid., p. 59.

[46] Ibid., p. 59, n.

Fessenden's definition and use of the terms "mob" and "people" indicate that he attributed these uprisings to the lowest class of society, the propertyless rabble. By "the mob," he says in an early footnote, he would designate

> ... certain of the lowest class in the community, who are alike destitute of property and principle, and may be emphatically stiled the rabble. Those, in America, consist principally of imported desperadoes, who have made this country an 'asylum' ... .[47]

By "the people" he means

> ... the great body of American farmers, merchants, mechanics, etc., who, possessing habits of industry, and our primitive New England manners, may be considered as the stamina of republicanism.[48]

But Fessenden soon forgets this distinction. Nowhere in Democracy Unveiled does he maintain it. In the verse referring to the debtors' revolts he blames the people for "mobocratical abuses," and the third Canto of his satire is called "Mobocracy," a name which reveals his opinion of democracy and majority rule. Fessenden forgets also that Shays' "mob" was composed of irate, indebted farmers. And he never speaks of the democratic majority as "the

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[47] Ibid., p. 2.

[48] Ibid., p. 3.

people ... the great body of American farmers, merchants, mechanics ...," but always as the "mob," which the demagogues flatter and adore. Thus his use of "mobocracy," "mob," and "democracy reveals his Federalistic economic bias. This bias is also evident from the shaky logic of his distinction. If the great body of the American people are men of some property, even though only farmers and mechanics, why is the propertyless rabble to be feared? It is a small minority, so small that it can hardly be properly called a mob. One is forced to conclude that the people of property whom Fessenden trusted were not such a large group after all, but instead a small minority holding considerable wealth in land and intangibles.

At any rate, according to Fessenden the majority, whether "people" or "mob," cannot discern the true national interests; they are too much interested in their own private affairs. The commercial and agrarian classes oppose each other. The people are not always the correct judge of what measures are to their best interest:

> Hence, brave men, who our battles fought
> Did not distinguish as they ought
> The odds, existing, in a high sense,
> Twixt Liberty and boundless license.[49]

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[49] Ibid., p. 61.

After the war the people complained that the cost of government was exorbitant, that they were rid of King George, but had instead King (Governor) Bowdoin and even more arbitrary taxes. They wanted no taxes at all.

> Such sentiments had long been brewing,
> And boded nothing less than ruin
> To our still weak confederation,
> Too novel for consolidation.
>
> Now, fann'd by Gallatins and Shayses
> The fire of civil discord blazes;
> And breaks out in a vile rebellion,
> Yea, two or three which I might tell ye on.[50]

A final important objection which Fessenden had to majority rule was the same one Gerry had expressed in the Constitution -- that the worst men would get into office. To make all offices elective would be a serious mistake, he warns. It is often argued that if the government were melted down into a pure democracy,

> ... the people would increase their power and privileges, by having every office in the government at their own direct and immediate disposal. The consequence of this, however, would be, that the only mode for obtaining office, would be to turn demagogue, and flatter and cajole the populace. But this kind of office-hunting, would be submitted to by none but men who are very unfit to be employed in any public capacity, and a government of bad men would give us of course, a bad government.[51]

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[50] Ibid., p. 64.

[51] Ibid., p. 124, n.

The majority would be almost certain to elect incompetent and undesirable candidates -- demagogues, opportunists, scoundrels, failures in other walks of life. For only men of inferior abilities take up democratic principles; they alone have anything to gain from democracy:

> Your half-wits are, by nature, formed for Democracy. Leaden-pated gentlemen, who vainly aspire to eminence in the learned professions, quack-doctors, illiterate clergymen, and blundering lawyers, are the Democracy of nature, and their opposites are, sometimes, stiled the Aristocracy of nature. Between these two sorts of candidates for eminence, there will always exist a covert or an open war. Those who belong to that class in society, which nature intended should move in a subordinate and limited sphere, are rarely contented with their condition, but by means of the little arts of little minds, elevate themselves to an artificial consequence, which terminates in their disgrace and the public detriment.[52]

The source of all this actual and potential trouble from the majority, shouts Fessenden, is the Jeffersonian Democrats, who, elected by the people, are now in office and whose demagogic villainy it is his purpose to expose. They introduced the noxious doctrines of democracy from France. They have been a disturbing influence in America

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[52] Ibid., p. 82 n. Washington had similar opinions about the type of candidates proposed by the Democratic Party and about the people's eagerness to vote for any Democratic candidate. "Let that party set up a broomstick, and call it a true son of liberty, -- a democrat, -- or give it any other epithet that will suit their purpose, and it will command their votes in toto." Writings, ed. Ford, XIV, 191.

for years, first as Tories, then as enemies of the Constitution, finally as demagogues:

> As Tories many of you vex'd us,
> As Antifederals then perplex'd us
> And, ever bent upon confusion,
> Oppos'd the Federal Constitution.
>
> And then, camelion like, vile brats!
> You call yourselves <u>good</u> Democrats;
> And next to drive deception's game,
> Self-stil'd Republicans -- for shame.
> .....
> But after all these shifts -- you rogues,
> You're nothing more than demagogues,
> And bawl for freedom, in your high rant,
> The better to conceal the tyrant![53]

The insincerity of these Democrats who speak honeyed words about equal rights and the will of the people is patent. Though not all of them are actually at heart tyrants,

> ... their leaders are, generally speaking, haughty and imperious demagogues. Like the <u>genuine</u> -- republican-slave-driving-nabobs of Virginia, who would fain conceal their designs of domination, beneath the mask of liberty, and a <u>pretended</u> zeal for the rights of the people.[54]

Their aim is to gain power and thus advance their selfish interests. To do this, they spread their levelling tenets:

> The Wretches, now, announce hostility
> To talents, virtue, and civility --
> Direct their Vandalizing ravages
> To make men like themselves, mere savages.[55]

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[53] <u>Democracy Unveiled</u>, pp. 13-14.

[54] <u>Ibid</u>., p. 3, n.

[55] <u>Ibid</u>., p. 80.

In a footnote Fessenden deplores the suspicions aroused in the people by Jeffersonian demagogues against the men of foremost talent in America:

> There always is something "rotten in the state of Denmark," if men of the first abilities are decryd by demagogues, and pointed out as proper objects for the jealousy of the people. That the principal talents in America are now in disgrace because they are Federalists, none but most brazen faced partizans will deny.[56]

This is the inevitable result of the cant of the Democrats about equal rights and the will of the people.

Fessenden pillories several of these demagogues in his fifth canto. The first to suffer indignity from him is Albert Gallatin, Jefferson's Secretary of the Treasury, who seeks to rouse the people against their betters:

> His every paragraph's invented
> To make the people discontented,
> To raise the restless mob, and shove 'em,
> To pull down all that seems above 'em.[57]

Another virulent Jeffersonian demagogue is Benjamin Austin, whom Fessenden calls "Honestus," the pen-name which Austin used as author of Observations on the Pernicious Practice of the Law, a very radical book for its day. Like Gallatin, Fessenden points out, Austin seeks

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[56] Ibid.

[57] Ibid., pp. 181-182.

to get ahead in the world by playing on the passions, prejudices, and ignorance of the gullible rabble. His works

> ... are better calculated to do mischief with a certain class in society, than if they were better written; as they are addressed to the prejudices and weaknesses of the lowest classes in the community.[58]

Fessenden asks him

> Has it not been your constant aim,
> The passions of the mob t'inflame;
> Their jealousy and pride exciting
> By flattery, falsehood, and backbiting.[59]

In spreading democratic doctrines Austin has sought

> ... to arm the passions against the intellect of the community, and set the physical, in battle array against the intellectual powers of society.[60]

His motives for this mischief-making are those of all demagogues, pride and ambition pricked on by a consciousness of inferior abilities. For he has "... no other way to gratify his leading propensity, than to excite confusion, in order to rise in the tumult."[61] Fessenden finishes Austin off and epitomizes the demagogue's attitude in a quatrain:

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[58] Ibid., p. 130, n. 3.
[59] Ibid., p. 134.
[60] Ibid., p. 138, n.
[61] Ibid.

> For freedom you may make a pother,
> But 'twill be known, some time or other,
> How oft the People's good is lost in
> The Greater good of Mr. _____ «Austin.[62]

William Duane, editor of The Aurora, a powerful Democratic paper published in Philadelphia, typifies the malignant opportunist who follows Jefferson, Fessenden continues. Desiring power, like the imperious, slave-driving Virginians, he flatters the mob and promotes mob-ocracy in order to get it:

> Law, Order, Talents and Civility
> Before your worshipful mobility,
> Must bow, while your their knowing man,
> Lead by the nose your kindred clan.[63]

The results of Duane's slander of his betters will inevitably be arbitrary government by the mob, a government of mere brute power, not of secure and impartial laws. For he toils constantly by his scribblings in The Aurora to destroy all distinctions in society

> except merely such as a cunning man may establish as leader of a mob. The learned professions are the constant objects of his abuse, and that of the advocates for levelling systems who dash in the Aurora. Should his plans succeed, brutal strength and savage cunning, will be the only foundations for eminence.[64]

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[62] Ibid., p. 139.

[63] Ibid., p. 150.

[64] Ibid., p. 150, note.

On one occasion the impudent Duane had the temerity to assail even

> .....Columbia's godlike son,
> The Great, th'Immortal WASHINGTON.[65]

Since simple democracy, or straight majority rule, is an invitation for demagogues to practice their wiles, since it produces only evils by setting the passions and physical powers against the intellect of society, what should be done about it? Fessenden makes several suggestions. His general program is to dismiss the Democrats from office and return the Federalists to power, thus rendering the corroding principles of democracy harmless. He has several concrete suggestions to make as to the means of accomplishing this. First, the American people should cry down every Democratic rogue. Fessenden also calls this "scoundrel hunting." Second, they should give power to none but honest men, who are long-tried and faithful -- Federalists, of course. Next, they should not listen to demagogues. Another requisite of peace and security is that every man should stay in his allotted station in life. Equally important is a limitation on suffrage. And finally, Americans should "stop the rage of party lying." This last

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[65] Ibid., p. 153.

wholesome bit of advice, coming at the end of such a scurrilous production as Democracy Unveiled, is ludicrous indeed.

Fessenden's class consciousness and economic bias are clearly manifested in his elaboration of two of these admonitions -- that every man should stay in his proper place in society and that suffrage should be limited. The first of these he expresses as follows:

> Next, every man throughout the nation
> Must be contented in his station,
> Nor think to cut a figure greater,
> Than was design'd for him by Nature.
>
> No tinker bold with brazen pate,
> Should set himself to patch the State.
> No cobbler leave at Faction's call,
> His last, and thereby lose his all.
>
> No brawny blacksmith, brave and stout,
> Our Constitution hammer out,
> For if he's wise, he'll not desire
> Too many irons in the fire;
>
> No tailor, than his goose more silly
> Should cut the State a garment till he
> Is sure he has the measure right,
> Lest it fit awkward, loose or tight.
>
> No farmer, had he Ceres' skill,
> The Commonwealth should think to till
> For many soils in human nature,
> Would mock his art as cultivator.
>
> The greatest number's greatest good
> Should, doubtless, ever be pursued;
> But that consists, sans disputation,
> In order and subordination.
>
> Nature imposes her commands,
> There must be heads, as well as hands,
> The man of body, son of soul,
> The former happiest on the whole:-

For toil of body still we find
Is lighter far than toil of mind
And nought, perhaps, but tooth ache pains
Can equal "wear and tear of brains."

Blest is the man with wooden head,
Who labours for his daily bread,
More happy he, if truth were known,
Than Bonapart upon his throne:

Yes, his advantage most immense is,
In all enjoyments of the senses,
If health and strength in him are join'd,
With heaven's best boon, a tranquil mind.

Then think not providence disgrac'd you,
If in some lower rank it plac'd you,
Think poverty no punishment,
And be with competence content... .[66]

By implication this is both partisan and anti-democratic. For since Fessenden eliminates all tradesmen, mechanics, and farmers, no one is left to hold office but the very wealthy. And since the wealthy landed gentry of Virginia are for the most part "criminals" and "imperious demagogues," no competent men remain but the commercial, capitalistic Federalists. Hence it is logical to infer that a man of the people should not hold office, but only a member of the minority class, and of this class only a Federalist. Fessenden's concept of natural aristocracy is thus very narrow; in the sharply stratified society

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[66] Ibid., pp. 198-202.

which Fessenden describes as desirable, the natural aristocrats, the men of real ability, compose a very small group, and considerable property is their distinguishing mark.

The protection of this property is one of the principal functions of government and one of the chief purposes of limiting the power of the majority. This is clearly implied in the introduction to the third edition of Democracy Unveiled:

> Men of property, and men whose talents and industry afford them a reasonable prospect of its acquisition, are interested to the amount of their possessions and prospects in a regular, efficient and just government. If our political rights are undefined and insecure, our civil rights, among which is the right of property, will not long be respected.[67]

An essential aid in achieving this sound stability of Government, Fessenden points out, is a property qualification for suffrage:

> There must be limits put to suffrage
> Although the step excite enough rage,
> Lest men devoid of information,
> And honesty should rule the nation.[68]

Fessenden elaborates further in one of his inevitable footnotes:

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[67] Quoted by Porter G. Perrin, op. cit., p. 85.

[68] Ibid., p. 207.

Some qualifications as respects property, residence, and citizenship, ever have, and ever will be found necessary in a civilized state of society, in order to qualify a man by his vote, to dispose of the property of others. What should we say of a man who assumed a right to direct the operations, and tax the shares of a private company of merchants, who held no stock belonging to the company?[69]

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[69] Ibid., p. 208, n. The eighteenth century conservatives' fear for their property under a democratic government is also illustrated in The Democrat, a picaresque satire by Henry James Pye, poetaster, poet-laureate of England, country gentleman, and supporter of Pitt in Parliament. This work was first published in New York in 1795. A second edition appeared in London in 1796. In his preface Pye says that "the political cant of Le Noir, and his propensity to equalize the property of every one whom he has any thing to do with, are ... exactly of a piece with the talents of our democrats ... ." Henry James Pye, The Democrat or Intrigues and Adventures of Jean Le Noir ... New York, 1795, viii. Le Noir's chief aim in life is the equalization of property -- that is, of the property of those who have more than he. As a boy he always contrived to divide up the supply of grapes, nuts, or apples, if any boy had a greater supply than he. "... it is not to be denied that he sometimes took a much larger share than the strict rules of equality would justify ... ." Ibid., p. 3. He enlists as a drummer boy and goes to America to help fight the English, where he becomes fluent in English and is indoctrinated by his officers and the Americans with the principles of freedom and equality. On his return to France he takes an active part in the French Revolution and becomes an associate of Marat, Robespierre, and Tom Paine. After the Revolution he resolves to become a democratic missionary to England. His picaresque adventures during this missionary journey compose most of the book. Seeking to spread his pernicious French doctrines in England, he looks for dissatisfaction and wherever he finds it gives a discourse on freedom, equality, and the French method of acquiring them. As a result he gets into many scrapes, for all the people he meets complain, but for some reason or other dislike what he says and attack him either with words or with physical violence. The English grumble but are loyal English nonetheless.

This short picaresque tale illustrates the similarity between English Tory and American Federalist opin-

This is a very extreme statement of the stake in society theory. For by his analogy between society and a private corporation Fessenden implies that the only concern of government is with property rights, that he who has no property has no stake in society and government, has nothing to protect, and therefore need not and should not vote. In making use of such a weak analogy, Fessenden ignores human rights, or rights of person, as John Pendleton Kennedy called them later.

Like the Connecticut Wits, Fessenden was convinced of the inability of the people to govern themselves. Although the French Revolution and Shays' rebellion were no longer live issues in 1805 when he wrote, the administration of Jefferson inspired him to express the same fears the Wits had given voice to a few years earlier. Like them he feared the dynamic levelling tendency of democracy, the destruction of all distinctions between men and classes of men. His concern for the rights of property is more explicitly stated than that of the Wits, but it is identical with theirs nevertheless. Likewise his criticisms that democracy leads to anarchic violence, to the wreck of government by the influence of demagogues and the conse-

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ion about democracy. That it was first published in New York is evidence of what a good market America was for books about democracy in the seventeen-nineties.

quent election of incompetent men, and finally to despotism; they are merely the working over of old material. There are no new ideas in Fessenden. However, he does give a fuller treatment of the demagogue as an unscrupulous, hypocritical, artful opportunist than did the Connecticut Wits. But this was not original; it was a commonplace among the Federalist newspapers of the day.

Fessenden, then, was a typical Federalist in every way, but particularly in his motives for attacking the Democratic-Republican Party. He attacked it because it was the party of the majority and because the majority principle was one of its main tenets.

III

In a supplementary note in the appendix to Democracy Unveiled, Fessenden says that had he not lacked space he would "have published from the Port Folio, Farmer's Museum, Federal Orrery, and other Federal Newspapers, a number of satirical productions, in which the folly and wickedness of Democracy, and of Democrats are the burthen of the song."[70] A sample of the "satirical productions" which

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[70] Democracy Unveiled, pp. 216-217.

appeared in these early papers is a bit of doggerel from The Portfolio. It contains the old charges against democrats -- lawlessness, mischief-making, envy of the rich, oppression of the minority. As art it is no better than Democracy Unveiled. The republicans referred to are the Jeffersonian Democrats, or Democratic-Republicans.

> A republican's picture is easy to draw,
> He can't bear to obey, but will govern the law;
> His manner unsocial, his temper unkind,
> He's a rebel in conduct, a tyrant in mind.
>
> He's envious of those, who have riches or pow'r
> Discontented, malignant, implacable, sour!
> Never happy himself, he would wish to destroy
> The comfort and blessings, which others enjoy.
>
> Our forefathers of old, by his arts were deceiv'd
> Presbyterians they trusted -- fanatics believ'd;
> But, the throne overturn'd, John Bull found, to his cost,
> He had fifty oppressors, for one he had lost!
>
> Till at length the whole nation were glad to restore
> That good constitution, which bless'd them before;
> They no longer endur'd the republican yoke,
> But hallow'd the boughs of the fam'd royal oak![71]

Another anti-democratic effusion presented in the same magazine was reprinted from The Palladium, so the editor says. It was offered as a parody of a Democratic party song, "Jefferson and Liberty" and could be sung to the same tune. Parts of it attack Duane, editor of The Aurora, parts of

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[71]The Portfolio, III, 94, (March 19, 1803).

it make the conventional accusations against the Democrats of faction, demagoguery, and pandering to the lower classes.

The democratic Night prevails,
The reign of Order now is o'er;
Its soldiers, sheriffs, ropes and jails,
Its clans of Judges, are no more!
Rejoice, ye Jacobins, rejoice,
To rulers never bend the knee,
But join with bumper, soul and voice,
For J----------n and Liberty.

Duane no more the halter dreads,
The torrent of his lies to check;
No gallows Cheatham's dreams invades,
Nor lours o'er Holt's devoted neck.
Rejoice, ye libellers, rejoice,
"Twice fifty thousand lies," so free,
To Slander's notes shall tune each voice,
For J----------n and Liberty.

Aurora, hail, with Irish yell!
Our chief beneath thy boreal morn,
Rebuild Rebellion's midnight cell,
For Faction's scribblers yet unborn.
Ye Printers' Devils all rejoice!
From gags your lying throats are free;
Then rail with goose-quill, heart and voice
For J----------n and Liberty.

.....

In wastes the flower-de-luce shall blow,
Whiskey the Mammoth's thirst supply;
And gin in nectar'd streamlets flow,
Distilling from the pores of rye.
Rejoice, ye Whisky Boys, rejoice,
Your drams from vile excise are free;
Then join with bumper, heart and voice,
For J----------n and Liberty.

Ope, ope the mouth of Labour wide,
With whisky fill its gorging jaws;
Then set the seventh command aside,
And "Christian bigot" holy laws.

Rejoice, Ye Libertines, rejoice,
Your drams from vile excise are free;
Then join with bumper, heart and voice,
For J----------n and Liberty.

From "Georgia to lake Champlain,"
From seas to Mississippi shore,
Ye sons of Faction loud proclaim,
That Law and Order are no more.
Rejoice, ye Jacobins, rejoice,
To God or man ne'er bend the knee,
But join with ear, and soul, and voice,
For J----------n and Liberty.[72]

The Portfolio, in which these verses appeared, was a widely read and influential Federalist weekly magazine published in Philadelphia. Its first number appeared on January 3, 1801. Its editor, Joseph Dennie was a critic and essayist of ability and taste in literature and a Federalist fire-brand in politics. He had edited The Farmer's Museum in Walpole, New Hampshire, and had printed some contributions by the youthful Fessenden. Although The Portfolio was for the most part a literary magazine, it took note of politics by regularly printing paragraphs of caustic comment and essays on timely political subjects. Its policy became non-partisan in 1809, and after Dennie's death in 1812 politics were strictly excluded from it.[73]

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[72] Portfolio, III, p. 64, (February 19, 1803).

[73] Frank Luther Mott, A History of American Magazines 1741-1850. New York and London, 1930, p. 230.

The heyday of its popularity was from 1802 to 1805, when "its subscription list was larger than that of any earlier American magazine."[74]

Dennie was a typical Federalist editor, inveighing constantly against democracy with all the energy and venom he could summon, giving many political essays their first printing and borrowing and reprinting many others from various Federalist papers. Dennie's most renowned political utterance in his day was one of his miscellaneous paragraphs which appeared regularly in The Portfolio:

> A democracy is scarcely tolerable at any period of national history. Its omens are always sinister, and its powers are unpropitious. With all the lights of experience, blazing before our eyes, it is impossible not to discern the futility of this form of government. It was weak and wicked in Athens. It was bad in Sparta, and worse in Rome. It has been tried in France, and has terminated in despotism. It was tried in England, and rejected with the utmost loathing and abhorrence. It is on its trial here, and the issue will be civil war, desolation, and anarchy. No wise man but shudders at its miseries, no honest man but proclaims its fraud, and no brave man but draws his sword against its force. The institution of a scheme of polity, so radically contemptible and vicious, is a memorable example of what the villainy of some men can devise, the folly of others receive, and both establish, in despite of reason, reflection and sensation.[75]

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[74]Harold Milton Ellis, Joseph Dennie and His Circle, a Study in American Literature from 1792 to 1812. University of Texas Studies in English, No. 3, Austin, Texas, 1915, p. 174.

[75]Portfolio, III, 135, (April 23, 1803). Quoted by Mott, op. cit., p. 229. This statement was in the best

A fair summary of Dennie's political convictions, this paragraph caused a minor storm at the time of its publication and got its author into considerable trouble. It came

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tradition of extreme Federalist journalism. Beginning in 1789, John Fenno regularly printed similar opinions on democracy in his Gazette of the United States. e.g., "Take away THRONES and CROWNS from among men, and there will soon be an end of all DOMINION and JUSTICE. There must be some adventitious properties infused into the government to give it energy and spirit, or the selfish, turbulent passions of men can never be controuled. This has occasioned that artificial splendor and dignity that are to be found in the courts of so many nations. Some admiration and respect must be excited towards public officers, by their holding a real or supposed superiority over the mass of the people." Gazette of the United States, II, No. 98, p. 389, (March 20, 1790). A few years later Fenno published a communication from Cooperstown: "Wherever the mania of democracy prevails, the wholesome restraints of the best government on earth, will be spurned at, under the titles of oppression and tyranny ... The more democratical the government is, the more will restless and ambitious demagogues abound, who, like the grave will never say it is enough." Ibid., IX, No. 1125, n. p. ^cp. 3[»], (April 16, 1796). Fenno printed selections from John Adams' Defense of the Constitutions in the Gazette from May to September, 1789. He printed Adams' Discourses on Davila from April 28, 1790 to April 27, 1791. It is not surprising, therefore, to find him saying "... that supreme independent power in the hands of either the one, the few, or the many, has in all ages and countries degenerated into tyranny ..." Gazette, III, No. 3, p. 11, (May 7, 1791).

These and Fenno's other anti-democratic statements did not go unchallenged, however. Philip Freneau, the leading Democratic editor of the seventeen-nineties, waged a bitter journalistic battle with Fenno in defense of popular government. For a detailed account of this bitter controversy between Fenno and Freneau and their respective patrons, Hamilton and Jefferson, see S. E. Forman, "The Political Activities of Philip Freneau," Johns Hopkins University Studies in Historical and Political Science, XX, 499-543.

to the attention of contemporary editors immediately, was reprinted with approval by the Federalists and attacked vehemently by the Democrats, who denounced Dennie as a traitor and libeller.[76] On July 4, 1803, a grand jury to which the paragraph was presented indicted Dennie for seditious libel.[77] He was tried and acquitted in 1805. After his trial, Dennie defiantly called democracy "a fiend more terrible than any that the imagination of the classical poets ever conjured up from the 'vasty deep' of their Pagan hell."[78] In his prospectus for the new series of The Portfolio in 1806, Dennie stated his opinion of the plaudits of the multitude:

> If by the public opinion be meant, the unlearned reason of a majority told by the head, for that he (the editor) has indeed a MOST SOVEREIGN CONTEMPT. The common people, in any country, in every age, are nearly all the same. Their praise is often to be dreaded, and their censure is generally proof of the merit of the object.[79]

Dennie held the same opinion of the majority "told by the head" in politics; he had only "sovereign contempt for it." Some of his miscellaneous paragraphs demonstrate this:

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[76] Ellis, op. cit., p. 184.

[77] Ibid., p. 184.

[78] Portfolio, V, 583 (December 7, 1805). Quoted by Mott, op. cit., p. 230.

[79] Quoted by Mott, op. cit., p. 230.

> In every commonwealth, a vast majority of the common people have an habitual aversion to literature, and a swinish sulkiness towards every thing that looks like talents. This is in the front rank of objections to that simple form of government.[80]

> In the more advanced conditions of civil society, it is evident, at least in great empires, that the more numerous class of the community are necessarily, from their situation, disqualified from not only bearing a share in the administration of the government, but from even forming an opinion of it:- their passions may be easily inflamed by popular appeals to them, but their judgments can never be sufficiently informed to direct them in a discreet decision upon matters beyond their competency.[81]

It is not surprising, then, that when Jefferson's campaign against the Federal Judiciary began on January 6, 1802, with a move to repeal the Judiciary Act of 1801, Dennie should have lost no time in breaking a lance for the judges and the Federalist cause. The Act of 1801, passed by the Federalists just before they left office forever, had provided for circuit judges to preside over the circuit courts and to relieve the Supreme Court Justices of this onerous duty. Since good stout Federalists had been appointed to all of the judgeships by John Adams just before he turned over the government to Jefferson, the Democrats wanted to abolish the newly created courts and thus clear the government of their political enemies.

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[80] Portfolio, III, 30, (Jan. 22, 1803).

[81] Portfolio, II, 388, (Dec. 11, 1802).

Hence the proposal to repeal the Act of 1801 and the bitter contention within and without Congress over this issue. Dennie did his part by printing a series of political essays entitled "A Friend to the Constitution," which he claimed to have received in a pamphlet from Washington.

The author of the articles first attacks repeal of the act and abolition of the offices as unconstitutional. The Constitution, he argues, in giving Congress the power to establish such inferior courts as it shall think necessary, does not give it discretionary power to abolish the courts once they have been established. For the Constitution says that all Federal Judges shall hold office during good behavior. As soon as a judge is appointed, "... the constitution adopts him, and declares that he shall hold office by the firm tenure of '<u>good behaviour</u>'. He is recognized by the constitution, and becomes a judge under it, not merely by virtue of the law."[82] Congress no longer has any power over him. If it had the power to abolish inferior courts by the repeal of a law it had passed, it could also abolish the Supreme Court by repealing the law which established it and fixed the number of judges. This would be a flagrant violation of the Constitution. "The

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[82] <u>Portfolio</u>, II, 12, (Jan. 21, 1802).

right to permanence in office is then alike bestowed, by the constitution, on the judges of the supreme and inferior courts ... ."[83]

Another argument used by the author against repeal of the law is that it would weaken the judiciary, "one of the three pillars, on which the great fabric of government was erected,"[84] by making it dependent on another branch, the legislature. This upsetting of the equilibrium and separation of the powers of government would have very serious consequences. Individual rights would no longer be secure. For

> To the judicial department in every society is committed the important power of deciding between the government and individuals, and between different individuals having claims on each other. The dearest interests of man ... life, liberty, reputation and property often depend on the integrity and talents of the judge.[85]

And this indispensable branch is very weak in comparison to the legislative and executive branches. For since it neither wields the sword nor holds the purse strings, it cannot protect itself from the invasions of the other departments, much less carry out an invasion of its own, "to aggrandize itself."[86] But its greatest weakness is that

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[83] Ibid.

[84] Ibid., p. 14.

[85] Portfolio, II, 21, (Jan. 23, 1802).

[86] Ibid.

it lacks popular support and because of the dignity and necessary remoteness of its position is prevented from obtaining it.

> What is still more decisive, its purity, its decorum of station requires a total abstinence from the use of those means by which popular favour is to be obtained. In a government, constituted like that of the United States, popularity is real power, and those who hold it will always be found too mighty for such as they may choose to attack. It will be forever arranged on the side of those whom the people elect, and their very election evinces that they possess it.[87]

In any test of power between the courts and the legislature, therefore, the advantage will be entirely on the side of the legislature, which could easily dominate the courts.

The consequences of this subservience of the judges to the legislature would be very serious, especially in a republic, where party spirit is always strong and shifts of power frequent. The courts, which should render impartial decisions, would be used as a political weapon to wreak injustice. When the victims of this injustice got into power in their turn, they would use the courts to get their revenge. Thus a vicious circle would be started. The dependence of the judges on the will of the legislature in a republic is as bad as their dependence on the will of the executive in a monarchy:

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[87] Ibid.

> Let the dependence exist, and its consequence will be an improper and injurious subserviency to the will of the superior. Legislative is as heavy as executive oppression, and is the more to be dreaded as it cannot be checked by public opinion, for public opinion is generally with it. When public opinion changes, the governing party changes also, and the persecuted become the persecutors. The instrument of persecution, an enslaved judiciary, is ready for any hand bold and strong enough to seize it.
>
> The government of a party continuing for a great length of time the majority, and consequently in power, may gradually soften and assume the appearance of the nation. But where the division is nearly equal, the struggle incessant, and success alternate, all the angry passions of the human mind are in perpetual exercise. The new majority brings with it into power a keen recollection of injuries, supposed, if not real, and is entirely disposed to retort to them. Vile calumny, exclusion from social rights, proscriptions and banishments have in democracies, where the ruling party acts without the check of an independent judiciary, been the bitter fruits of this temper. The best safeguard against evils so serious and ... certain, is a tribunal beyond the reach of these passions without the judgment of which punishment cannot be inflicted.[88]

Such a tribunal is necessary because judges dependent for their continuance in office on the will of "an irritated

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[88] Portfolio, II, 21, (Jan. 23, 1802). Arguments almost identical with these were used by the Senate Judiciary Committee in its report on Roosevelt's Reorganization Bill in 1937. e. g., The proposed bill "... tends to expand political control over the judicial department by adding to the powers of the legislative and executive departments respecting the judiciary." The New York Times, June 15, 1937, 18:2. "It is essential to the continuance of democracy that the judiciary be completely independent of both the executive and legislative branches of the Government ... ." Ibid., 18:8. "If the court of last resort is to be made to respond to a prevalent sentiment of a current hour, politically imposed, that Court must ultimately become subservient to the pressure of public opinion of the hour, which might at the moment embrace mob passion abhorrent to a more calm, lasting consideration." Ibid., 19:1.

majority in congress" cannot be expected to act as "a barrier which shall check its resentments."[89] In a private suit there could be no justice either. An "impotent and unpopular suitor," a member of the minority, would stand no chance against a member of the majority before a judge dependent on the majority will for his continuance in office. "This is no imaginary statement of an impossible case, It is the regular and constant result of a dependent judiciary," the friend to the Constitution warns.[90] He concludes with a peroration to his readers:

> Will you establish a principle which must place in the hands of the predominant party for the time being, the persons and the property of those who are divided from them by shades of opinion: which will subject the weak to the powerful, and convert the seat of justice into a tribunal where influence, not law, must rule? Will you render a judiciary, which being constitutionally independent is now a safe and steady check to the encroachments of power and the persecutions of party, a mere instrument of vengeance in the hands of the tyrants of the day?[91]

Such are the evils of allowing the majority to elect and remove judges, even indirectly through the legislature. The judicial branch could then not perform its function of preventing a constantly varying majority from violat-

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[89] Portfolio, II, 21, (Jan. 23, 1802).

[90] Ibid.

[91] Ibid., p. 22.

ing absolute principles of justice, as an unchecked majority would inevitably do.[92]

Dennie held that these absolute principles, this higher law, guaranteed existing vested interests, the status quo in property. In a series of essays on politics published in The Portfolio in 1802, he denied that there are any natural rights, that men have a natural right to govern themselves. Liberty and other rights are acquired

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[92]At about this time the arch Federalist Samuel Chase, Associate Justice of the Supreme Court, in a charge to a Baltimore jury attacked the repeal of the Judiciary Act of 1801 and defended the independence of the judiciary as an essential condition of security in liberty and in property rights:

"... the late alteration of the federal judiciary by the abolition of the offices of the sixteen circuit judges, and the recent change in our state constitution, by the establishing of universal suffrage, and the further alteration that is contemplated in our state judiciary ... will, ... take away all security for property and personal liberty. The independence of the national judiciary, is already shaken to its foundation ... . The change of the state constitution by allowing universal suffrage, will, in my opinion, certainly and rapidly destroy all protection to property, and all security to personal liberty; and our republican constitution will sink into a mobocracy, the worst of all possible governments." Charles Evans, reporter, Report of the Trial of the Hon. Samuel Chase, one of the Associate Justices of the Supreme Court of the United States ... , Baltimore, 1805, Appendix, pp. 60-61.

It was for making such patently political charges as this, among other things, that Chase was impeached. For an excellent treatment of this whole question of the judiciary in the first administration of Jefferson, cf. Albert J. Beveridge's Life of John Marshall, III, chapters II and IV. Beveridge's interpretation is strongly Federalistic but very informative.

not innate, and are always subject to the regulations of governments. But strangely enough this does not apply to the right of property, a holy of holies which cannot be touched by the profane hands of government. "The great object, then, of civil society is to procure to us security in our persons and property."[93] And the best form of government is that which provides the most security, that is, makes permanent the status quo:

> It is ... not essential to liberty that freemen must necessarily be governed by the elected representatives of the majesty of the people; by what forms it is actually administered; in whose hands the springs of it are trusted ... . A monarchy may be free, whilst a Republic may be a tyranny. A government, which has framed itself by experience, though reconcileable to no theory, may be more free than the wisest system of democratic maxims, written in letters of brass, as a Constitution. The true test of liberty is in the practical enjoyment of protection. Where the same laws extend to all the subjects of different denominations; where there is no dispensing power; where the poorest claims obtain redress against the strongest; where his person and property are secure from every insult within the limits assigned to him by the known laws of his country;- that nation is free. Under whatever form of government property is insecure, law uncertain and arbitrary, and the person liable to insult without proof of guilt, that country is in a state of slavery.[94]

Referring to France, he says that a state of slavery, not liberty, exists also where

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[93] Portfolio, II, 371, (Nov. 27, 1802).

[94] Ibid., p. 372.

> ... under the pretence of public convenience, nay, even of the public safety, whole classes of the community may be proscribed, their property confiscated, their persons pointed out as objects of popular fury ... .[95]

And this has been the result of the false equality established by the French Revolution, he continues in a later essay of the same series. True equality means equal treatment by the law, the protection of the smallest bit of property, of the slightest privilege held by the most obscure individual as well as "the highest privileges and the most noble possessions of the proudest."[96] But this is not the meaning which the French have been pleased to give to their shibboleth, "Equality."

> All order and gradation in the community is disclaimed by them, and they have the merit, at least, of being the first legislators from the beginning of the world, whoever conceived so extravagant an idea, as, that man could exist in a great empire without those shades of rank and dependence upon each other which, to use one of their favourite expressions, have hitherto been thought to constitute the organization of civil society ... [97]

This fantasy is, of course, a direct violation of the "plan of nature," which "is in direct contradiction to such an idea."[98]

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[95] Ibid.

[96] Portfolio, II, 395, (Dec. 18, 1802).

[97] Ibid.

[98] Ibid.

The French Revolution was a series of diabolically planned steps toward the destruction of all property rights:

> The destruction of monarchy, and of Religion seem to have been only the preparatives to the invasion of all other property: and in truth, when the laws of property are daringly violated in one instance, there is no security for it in any other.[99]

The final ruin of the nobility and clergy in France was effected by upsetting the nice balance of the French government. After the new constitution was adopted, those in power used every effort to return those who had no property to the States General. The number of popular representatives was doubled, and the clergy and nobility, who had formerly voted in separate houses, were forced to vote in common with the people's representatives in the single house that remained.

> Little was the immediate consequence of this union to be wondered at, in an assembly so constituted, as to have a decided majority of those who had no property for the express purpose, that the interests of those who had property should be at their mercy. The confiscation of the estates of the clergy, that of all the feudal rights, quit-rents, and services attached to landed estates, followed -- the abrogation of titles of honour, and distinction of ranks, completed the levelling system; and monarchy, deprived of its support, fell as a thing of course,

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[99] Ibid.

till the republic has been finally established in all the scenes of horror we have seen.

What a situation have these unfortunate nobles been reduced to! Deprived of their honours, and abridged in their fortunes by laws which had their virtual assent in that assembly, where their suffrages were implied in a preponderating majority of their enemies.[100]

Under a system of democratic equality, the tyranny of the majority is far worse than that of the worst despot who ever lived:

Thus is the system of Equality fatally accomplished, and its melancholy victims are sent to wander over the earth -- a proof that the tyranny of the many is by far a more execrable injustice than the most odious despot ever yet exerted.[101]

These passages reveal where Dennie's sympathies were; they were entirely with the nobles and not at all with the peasants, who had endured poverty and injustice for centuries. For Dennie seems to have held that a vested property right is sacred, no matter how excessive it may be, no matter what injustice it may work, no matter how dishonestly it may have been obtained. To deprive the French nobles and clergy of the power to block any legislation proposed by the majority of the French people was an outrageous invasion of their rights, was subjecting them to "the tyranny of the majority."

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[100] Ibid.

[101] Ibid., p. 396.

Dennie feared the effects on property of the "tyranny of the majority" in America. In the third number of The Portfolio he laments the election of the new administration in America and says that the party has

> ... a cool-blooded philosopher, a disciple of Condorcet, at their head; and some of the most profligate, unprincipled men in the nation, for his counsellors and co-adjutors; nothing ... however sacred and venerable, will be suffered to interrupt the career of an universal revolution, in property, in men, and measures.
>
> To meet, and if possible to prevent this dreadful catastrophe, requires the prompt and united efforts of every man, who has a wish for the welfare of his country, or has any property of his own, that is worth defending.[102]

He gloomily predicts that Jefferson will lead America to war with Great Britain and regrets that we did not join Britain in a war against France, as many Federalists wanted to do: "This was the time to have given a mortal would to the daemon of democracy, and to have crushed, forever, the machinations of France."[103]

In a series of essays entitled "The Progress of Democracy," probably written by Dennie also, the Federalist thesis that democracy inevitably leads to autocratic rule by a despot is developed with detailed examples from history. In the first essay of the series, Dennie says that

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[102] Portfolio, 1, 18, (Jan. 17, 1801).

[103] Ibid.

democratic schemes of equality and universal suffrage are inspired by faction and are doomed to failure.

> It is ... evident, from a perusal of the history of different nations, that all the wild projects, and daring enterprizes of faction, I call it faction, for it degenerates to this in a very short space of time, «sic» to new model their government, on the broad system of equality, where all distinctions of rank are destroyed, and all principle of universal suffrage is acknowledged; «sic» where the rich, and the poor, the high and low, have equally a constitutional privilege, to direct the great machine of government, have never once brought into full operation their favorite scheme, nor advanced the nation one jot nearer that point of ideal liberty.[104]

An analysis of the English and French revolutions follows in later essays. Dennie points the lesson that both began as democratic movements and ended in despotism.

> Here, we plainly perceive, the progress of Democracy sprung from a virtuous origin, and cherished by moral sentiments; its mature age is a scene of prostitution, profligacy, and civil war; it grows in vice and decrepitude, as it advances in years, till it finally degenerates into the vilest despotism that ever was imposed on mankind.
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> Such was the usurpation of Cromwell. Affecting a fanaticism which he never felt, reviling a King, whose government he approved, subverting a Constitution, whose energy, beauty, and vigilance, he, in a distinguished degree, admired and loved; he finally triumphs in the success of his hypocrisy, and rivets on his subjects a military government, ten times more galling than the reign of any one of their most absolute monarchs.[105]

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[104] Portfolio, III, 18, (Jan. 15, 1803).

[105] Portfolio, III, 34, (Jan. 29, 1803).

Despotism has resulted also in France from the seductive wiles of the siren and harlot, democracy.

> In all ages and countries there have been good men, who, seduced by the mildness and promising appearance assumed in the beginning, have favoured the introduction of Democracy; but the wicked alone have attended her through all the stages of her progress. Her first appearance prepossesses, her garb is modest, her manners simple, and the magic word liberty, whose attractive sound has deluded thousands, in all ages, is ever on her lips: but hypocrisy dwells in her bosom, her body is tainted with corruption, and her smile is the smile of deceit. ...
>
> In France, the military government of Buonaparte, rigorous and expensive, is the sole compensation the nation has received for the murder of its Sovereign and his Queen, the principals among his noblesse, and the heads of the priesthood ... .[106]

In one of his miscellaneous paragraphs printed in 1801, Dennie had called Napoleon "this usurper, this mountebank, this sudden fungus from the dunghill of democracy ... ."[107] By the time of the victory of Jefferson in the election of 1800, Napoleon had become a very useful bugaboo for the Federalists, a concrete, living example of the inevitable end of the policies of the new administration -- the man on horseback. Fessenden made similar use of Napoleon. But such a convenient contemporary illustration of his theories had been lacking to John Adams when he wrote his treatises on government, and to Alsop and Dwight in the early days of The Echo.

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[106] Portfolio, III, 154, (May 14, 1803).

[107] Portfolio, I, 54, (Feb. 14, 1801).

The author of "Thoughts on the Times," a series of political essays which Dennie reprinted from The New England Palladium, used the same argument, couched in the terms of John Adams:

> ... the power of the people, if uncontrouled, is licentious and mobbish; it is a government by force, without discipline. It is led by demagogues, who are soon supplanted by abler and bolder rivals, and soon the whole power is in the hands of one favorite, a General, elate with victory, and superior to his rivals. He reduces the mob-force to some order, and establishes discipline, so that the popular power is a Military Government in embryo.
>
> I am one of the last men, in the world, to desire to strip the people of all power; for then slavery would ensue. But their uncontrouled power is despotism, in its least hopeful form; the hardest to resist in its propensity to extremes, and the hardest to retrieve from that ruin of which it has ever been its own artificer. But as we have actually advanced one stage on our revolutionary journey, it concerns us to consider well of the means that will prevent our finishing it like France.[108]

In subsequent essays the author continues to warn his fellow countrymen to take a lesson from France and not to follow her course. The Jeffersonian Democrats "... are going on upon the French plan after it was hopeless and France had failed in it."[109] But it is still possible to avert the consequences of unbridled democracy, he pleads, if Americans will only act and take a firm stand against mob license. If the king, nobles and priests of France had done this in-

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[108] Portfolio, III, 137, (April 30, 1803).

[109] Portfolio, III, 178, (June 4, 1803).

stead of running away when they were most needed, order might have been preserved in France.

> If then, in France, where the rich were few and the rabble many, a stand might have been made with success, how much more reason for exerting ourselves in the United-States, where the mob are not one hundredth part of our population. Yet this one hundredth part will overturn every thing unless more pains are taken to hinder the event. Ruin is coming, and it may be prevented; and shall we cavil about the efficacy of the only means left us for our preservation.[110]

The steps by which he proposes "to hinder the event" are a return to Federalism by the nation and the earnest effort of all Federalists to bring this about.

The statement that "the mob are not one hundredth part of our population" is a little difficult to reconcile with the author's fear of majority rule and the influence of demagogues, as is Fessenden's fear of the infringement of property rights by a propertyless rabble which was a small minority in America. If the rabble, or mob, was such an insignificant part of the American population, why be concerned about its power?

Dennie also believed that America could ward off democratic tyranny and the tragic scenes that accompany it. The "simplicity of American manners," the republican

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[110] Portfolio, III, 170, (May 28, 1803).

government of the United States, the wider and more equal distribution of property would preserve America for a long period of time from the disasters which befell France. For

> No change produced in the United States, by the arts of jacobins, can be so complete and violent, consequently not so ruinous in its effects, as a revolution from a monarchical to a democratic government. The people cannot be dazzled so much in the former, since the novelty is not so great, nor the hope from change so flattering, since they who get into power, under the new form, have already been powerful under the old.[111]

But Americans could not depend on these conditions to check the progress of democracy permanently. Strong measures -- Federalist measures -- would have to be taken to accomplish that:

> But though these circumstances, peculiar to the United States, may retard the triumph of Democracy, they cannot check it; without a change of men and measures its domination will be complete -- Already its principles have taken deep root among us, and direct the conduct of our rulers.[112]

The Portfolio, both in its original and reprinted articles and verses, reveals the same economic and party bias as Fessenden and the Connecticut Wits. It is equally vituperative, and its criticisms of the Jeffersonian Demo-

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[111] Portfolio, III, 154, (May 14, 1803).

[112] Ibid.

crats and their principle of majority rule are virtually the same as those of Fessenden and the Wits. In The Portfolio, however, more stress is laid on the function of the judiciary in checking the majority, and the arguments in favor of such a check are developed in detail. But the doctrine of judicial review -- that the courts have the power to declare an act of Congress void and unconstitutional -- is conspicuously lacking from the articles printed in the magazine.

IV

But these same ultra-conservative, anti-democratic ideas received expression during this early period not only in obscure political satires and in periodical essays, but also in works now classics, written solely to entertain and not concerned primarily with politics. That such a romancer as Washington Irving should have made use of these Federalistic ideas indicates their prevalence at this time. Yet it is not surprising that some conservative sentiments should crop up in Irving's works, even though he preferred the calm waters of romance and legend

to the main stream of contemporary American life. For he was molded and conditioned by the conservative society of old New York in which he grew up and lived.

Hence, in the guise of Diedrich Knickerbocker, Irving speaks with suspicion and disfavor of popular sovereignty in his History of New York, published in 1809. These remarks, mere passing allusions, are unimportant in relation to the rest of the work, but they reveal Irving's strong conservative convictions. Most of them occur during the account of the rule of Peter Stuyvesant, called also the Headstrong. Peter, it seems, took a much firmer hand with the people than had his predecessor in office, William the Testy. As a result the people grumbled in restless dissatisfaction. In the passage in which Irving narrates these events, his comparison of the popular mob to cattle -- implying lack of intelligence and mere instinct and sensation in the people -- is most important:

> The populace unfortunately had had too much their own way under the slack though fitful reign of William the Testy; and though upon the accession of Peter Stuyvesant they had felt, with the instinctive perception which mobs as well as cattle possess, that the reins of government had passed into stronger hands, yet could they not help fretting and chafing and champing upon the bit, in restive silence.[113]

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[113] A History of New York, by Diedrich Knickerbocker, Works (National Edition). New York, 1860, I, p. 397.

On one occasion Peter the Headstrong returns to New Amsterdam from a military expedition to find intense political agitation and discussion taking place. Outwardly calm but inwardly boiling with rage, he approaches a meeting where an inspired cobbler is holding forth to an attentive audience. There is an awed silence and many sheepish looks upon Peter's arrival. He takes out his watch, offers it to the cobbler, and asks him to mend it. The cobbler replies that he cannot, that watchmaking is not his trade. Peter then roars at him suddenly

> dost thou pretend to meddle with the movements of government -- to regulate, and correct, and patch, and cobble a complicated machine, the principles of which are above thy comprehension, and its simplest operations too subtle for thy understanding, when thou canst not correct a trifling error in a common piece of mechanism, the whole mystery of which is open to thy inspection? -- Hence with thee to the leather and stone, which are emblems of thy head; cobble thy shoes, and confine thyself to the vocation for which Heaven has fitted thee. But ... if ever I catch thee, or any of thy tribe, meddling again with affairs of government, by St. Nicholas, but I'll have every mother's bastard of ye flay'd alive, and your hides stretched for drumheads, that ye may thenceforth make a noise to some purpose.[114]

The crowd melts away, and after this, refusing "the brawling multitude the right of misrule," Peter governs them in righteousness with a firm hand, as Irving implies the people should be governed.[115]

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[114] Ibid., p. 398.

[115] Ibid., p. 403.

At least he governs them thus for a while. For the people get the upper hand and finally force him to surrender when the English and Yankees from New England are besieging New Amsterdam. But when the people's delegates come to him to propose that he surrender, he kicks them downstairs and out of his house. The delegates then return to the people and make long speeches on the indignity they have just suffered:

> ... they felt for the dignity of the sovereign people, thus rudely insulted by the outrage committee on the seat of honor of their representatives. The latter part of the harangue came home at once to that delicacy of feeling, and jealous pride of character, vested in all true mobs; who, though they may bear injuries without a murmur, yet are marvellously jealous of their sovereign dignity - ... .[116]

A much more detailed criticism of majority rule occurs in one of Irving's earlier works, Salmagundi, done in collaboration with his brother, William Irving, and with James Kirke Paulding. This series of essays, issued at irregular intervals in New York during 1807 and 1808 was modelled on The Spectator of Addison and Steele and on Goldsmith's Citizen of the World. Some of the Salmagundi papers, critical of manners, customs, and conditions in early America, are in the form of letters from a visit-

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[116] Ibid., p. 450.

ing Turkish sea captain, Mustapha Rub-a-Dub Keli Khan, to his friend, Asem Hacchem, principal slave-driver to his highness the Bashaw of Tripoli. Like his prototype, Goldsmith's Lien Chi Altangi, the Chinese sage, Mustapha describes and comments on the strange things he observes in the land he is visiting. Strangest of all to him is the government of the United States, about which he writes several letters.

In his first letter Mustapha remarks that with regard to sovereignty the American government is constructed backwards, that the potent bashaw at the head of the government is actually responsible to the mob, to those whom he is supposed to govern.

> This empire is governed by a grand and most puissant bashaw, whom they dignify with the title of president. He is chosen by persons, who are chosen by an assembly, elected by the people -- hence the mob is called the sovereign people -- and the country, free; the body politic doubtless resembling a vessel, which is best governed by its tail.[117]

In a later letter Mustapha speculates on just what kind of government America has. This is difficult to determine, he says:

> ... some have insisted that it savors of an aristocracy; others maintain that it is pure democracy: and

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[117] Salmagundi ... , III, New York, 1860, p. 55.

a third set of theorists declare absolutely that it is nothing more than a mobocracy. The latter, I must confess, though still wide in error, have come nearest to the truth.[118]

But actually, Mustapha adds, it resembles a logocracy, or government of words, more than any other:

> The whole nation does everything viva voce, or by word of mouth ... . The country is entirely defended vi et lingua; that is to say by force of tongues. ... Every offensive or defensive measure is enforced by wordy battle, and paper war; he who has the longest tongue, or readiest quill, is sure to gain the victory ... .
>
> There is still preserved in this country some remains of that gothic spirit of knight-errantry, which so much annoyed the faithful in the middle ages of the hegira. ... they have accommodated themselves by appointing knights, or constant warriors, incessant brawlers, similar to those who, in former ages, swore eternal enmity to the followers of our divine prophet. The knights, denominated editors, or SLANG-WHANGERS, are appointed in every town, village, and district, to carry on both foreign and internal warfare, and may be said to keep up a constant firing "in words."[119]

The editors let fly at each other with their heavy artillery, which consists of "... large sheets, loaded with scoundrel! villain! liar! rascal! numscull! nincompoop! dunderhead! wiseacre! blockhead! jackass!"[120] But the noisiest, most loquacious group in the United States is its congressmen:

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[118] Salmagundi, VII, 135.

[119] Ibid., VII, p. 137.

[120] Ibid., p. 139.

> ... in nothing is the verbose nature of this government more evident, than in its grand national divan, or congress, where the laws are framed: this is a blustering, windy assembly ...[121]

Thus did Irving and Paulding ridicule the excessively long speeches, the political slogans, formulae, and name-calling, which characterize democracy, as Kennedy was to do later in Quodlibet.

The full meaning of mobocratic government is presented in the detailed account of an election which Mustapha gives in one of his letters. Majority rule makes the people an "awful despot" in this travesty of government. Freedom, equality, fraternity are mere shams used by office seekers to delude the people:

> I have seen ... that awful despot, the People, in the moment of unlimited power, wielding newspapers in one hand, and with the other scattering mud and filth about, like some desperate lunatic relieved from the restraints of his strait waistcoat. I have seen beggars on horseback, ragamuffins riding in coaches, and swine seated in places of honor; I have seen liberty; I have seen equality; I have seen fraternity! I have seen that great political puppet-show -- AN ELECTION ... when every leader, burning with warlike ardor, and encouraged by the shouts and acclamations of tatterdemalions, buffoons, dependents, parasites, toad-eaters, scrubs, vagrants, mumpers, ragamuffins, bravoes, and beggars, in his rear; and puffed up by his bellows blowing slang-whangers, waves gallantly the banners of faction, and presses forward to OFFICE AND IMMORTALITY.[122]

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[121] Ibid., p. 140.

[122] Ibid., XI, pp. 210-211.

Thus, under a democratic government, the dregs of society hold ultimate power. But the men who address the sovereign people at political meetings and elections are no better. They are idlers, wastrels, windbags:

> The orators who declaim at these meetings are, with a few exceptions, men of most profound and perplexed eloquence; who are the oracles of barbers' shops, market-places, and porter-houses; and who you may see every day at the corners of the streets, taking honest men prisoners by the button, and talking their ribs quite bare without mercy and without end.[123]

The pernicious effects of universal, or near universal suffrage, are expounded at length by Mustapha -- the influence of demagogues, the rejection of honest men of talents and election of the worst possible candidates:

> I could not help being struck with the exceeding great number of ragged, dirty-looking persons that swaggered about the place, and seemed to think themselves the bashaws of the land. I inquired of my friend if these people were employed to drive away the hogs, dogs, and other intruders that might thrust themselves in and interrupt the ceremony? "by no means," replied he; "these are the representatives of the sovereign people, who come here to make governors, senators, and members of assembly, and are the source of all power and authority in this nation." "Preposterous," said I; "how is it possible that such men can be capable of distinguishing between an honest man and a knave; or, even if they were, will it not always happen that they are led by the nose by some intriguing demagogue, and made the mere tools of ambitious political jugglers? Surely it would be better to trust to Providence, or even to chance, for governors, than resort to the discriminating powers of an ig-

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[123] Ibid., p. 212.

norant mob. I plainly perceive the consequence. A man, who possesses superior talents, and that honest pride which ever accompanies this possession, will always be sacrificed by some creeping insect who will prostitute himself to familiarity with the lowest of mankind; and, like the idolatrous Egyptian, worship the wallowing tenants of filth and mire."[124]

An important institution at American elections is the beer barrel, Mustapha explains. This goddess of unreason can be understood by the sovereign mob and frequently not only stops argument but also settles momentous issues and decides elections.

> ... a patriotic brewer arrived with a load of beer, which, for a moment, occasioned a cessation of argument. The great crowd of buzzards, puffers, and "old continentals" of all parties, who throng to the polls, to persuade, to cheat, or to force the freeholders into the right way, and to maintain the freedom of suffrage, seemed for a moment to forget their antipathies, and joined heartily in a copious libation of this patriotic and argumentative beverage.
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> These beer-barrels, indeed, seem to be most able logicians, well stored with that kind of sound argument best suited to the comprehension, and most relished by the mob, or sovereign people, who are never so tractable as when operated upon by this convincing liquor, which, in fact, seems to be imbued with the very spirit of a logocracy.[125]

In conclusion Mustapha points out that the majority, unless checked, will soon become tyrannous. But this tyranny of the many will not last long; it will soon break down to the tyranny of one, who will come to power by ca-

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[124] Ibid., pp. 215-216.

[125] Ibid., pp. 216-217.

joling the multitude. John Adams might have written the following passage:

> The experience of ages has demonstrated, that in all nations, barbarous or enlightened, the mass of the people, the mob, must be slaves, or they will be tyrants; but their tyranny will not be long: some ambitious leader, having at first condescended to be their slave, will at length become their master; and in proportion to the vileness of his former servitude, will be the severity of his subsequent tyranny. Yet with innumerable examples staring them in the face, the people still bawl out liberty; by which they mean nothing but freedom from every species of legal restraint, and a warrant for all kinds of licentiousness; and the bashaws and leaders, in courting the mob, convince them of their power ... .[126]

Another passage having a strong flavor of Adams occurs in a subsequent letter by Mustapha. The warfare between classes resulting from the natural inequality of men keeps society in a constant turmoil and renders pure democracy an idle dream:

> There will always be an inequality among mankind so long as a portion of it is enlightened and industrious, and the rest idle and ignorant. The one will acquire a larger share of wealth, and its attendant comforts, refinements, and luxuries of life, and the influence and power which those will always possess who have the greatest ability of administering to the necessities of their fellow creatures. These advantages will inevitably excite envy; and envy as inevitably begets ill-will -- hence arises that eternal warfare which the lower orders of society are waging against those who have raised themselves by their own merits, or have been raised by the merits of their ancestors, above the common level.[127]

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[126] Ibid., p. 219.

[127] Salmagundi, XIV, p. 283.

In another nation, remarks Mustapha, such conditions might lead to civil war or to less serious bloodshed, but in this strange land, under a logocratic government, they merely excite passion which is vented in turgid speeches or slanderous attacks on character.

The same pattern of ideas that appears in the writings of the Connecticut Wits, of Fessenden, and of Dennie likewise is evident in the Salmagundi papers. Most of the stock Federalist criticisms, formulae, and bugbears occur here -- the ignorance, passion, and unreason of the people, who place the worst possible men in office; demagogues who prostitute themselves to gain office and power; faction; strife between the haves and have-nots; and finally, the tyranny of the majority. There are no new criticisms in the writings of Irving -- either in his History of New York or in Salmagundi.[128] Like the Connecticut Wits, Fessenden,

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[128] According to Stanley Williams, all of the letters of Mustapha dealing with politics, with the exception of Salmagundi III, in which Irving and Paulding collaborated, were written entirely by Irving. Stanley Williams, The Life of Washington Irving, 2 vols., New York and London, 1935, II, 271.

Irving expressed his detestation of American democratic politics years later in a letter to his brother in 1833. He could not abide Jacksonian Democracy: "The more I see of political life ... the more I am disgusted with it ... . There is such coarseness and vulgarity and dirty trick mingled with the rough and tumble contest. I want no part or parcel in such warfare." Quoted by Edwin Greenlaw, "Washington Irving's Comedy of Politics," The Texas Review, I, (1915-1916), 294.

and Dennie, he repeats John Adams and Alexander Hamilton. What is new and original in Salmagundi and the History of New York is the manner of expression -- the delightful style of banter, the picturesque detail which Irving uses to make these stale, common ideas fresh and interesting.

CHAPTER IV

HUGH HENRY BRACKENRIDGE, FRIENDLY CRITIC OF THE MAJORITY

Hugh Henry Brackenridge, frontier lawyer and judge, resident of Pittsburgh, and author of Modern Chivalry, was a sympathetic critic of democracy and of its fundamental doctrine, majority rule. Both his sympathy and his criticism appear in this loquacious, digressive, picaresque medley of the adventures of Captain Farrago and his Irish servant, Teague Oregan. Brackenridge was well fitted for carrying out the purpose which he announced in Modern Chivalry, the exposing of the follies and excesses of democracy. His reserved approval of democracy was the result of first hand experience with its virtues and vices as they were manifested on the Pennsylvania frontier. A loyal Jeffersonian, his deep democratic faith forced him into a conspicuous role in the Whiskey Rebellion as advisor to the recalcitrant farmers; for even though he sympathized with their objections to the tax on whiskey, he considered the federal government necessary and desirable and hoped to persuade the rebels to follow a more moderate course in opposing its authority. As his reward from the aroused backwoods farmers whom he had attempted to dissuade

from rash, violent resistance to the government, he received only ingratitude and unfounded accusations of duplicity. He was accused of treason against the national government by the Federalist extremists on the other side, but on his appearance before Hamilton for questioning, he was absolved of all charges.[1]

In Modern Chivalry, which was published in various parts and volumes between 1792 and 1815, Brackenridge took the same via media which made him the scapegoat for both sides in the Whiskey Rebellion. He reiterated his democratic principles frequently and claimed to be a true democrat[2] who believed that democracy was the freest and most just form of government.[3] He was "for keeping up the spirit of the people, the atmosphere of liberty" in which "we breathe, and have our being."[4] He detested aristoc-

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[1]C. M. Newlin, editor, Modern Chivalry by Hugh Henry Brackenridge, New York, 1937, p. xvii. For the facts of Brackenridge's life and also for many helpful leads on his political ideas, I am indebted to Professor Newlin's able introduction. For a detailed account of the part Brackenridge played in the Whiskey Rebellion see his Incidents of the Insurrection in the Western Parts of Pennsylvania, in the Year 1794, Philadelphia, 1795. John Dos Passos has written a chapter on Brackenridge's role in the rebellion in The Ground We Stand On, Some Examples from the History of a Political Creed, New York, 1941, pp. 388-401.

[2]Modern Chivalry, ed. Newlin, pp. 427, 450.

[3]Ibid., p. 20.

[4]Ibid., p. 440.

racy, in which "... the pride of purse and ... of family raises the head; swells the port; produces the strut and all the undervaluing which the few have for the many."[5] But even though Brackenridge preferred the rule of the many to that of the few, he was not blind to the faults of democracy. Much of his book is devoted to a criticism of its excesses. In the same breath with which he expressed his faith in the people he could make serious criticisms of their actions. For example, "... let no man who means well to the commonwealth," he warned, "and offers to serve it, be hurt in his mind when someone of inferior talents is preferred. The people are a sovereign, and greatly despotic; but in the main, just."[6] This giving with the right hand and taking away with the left indicates that Brackenridge's faith in the majority principle was not unqualified. Like Adams and Hamilton, he feared the rule of a simple majority in a single assembly and believed that the majority will should be checked by a balanced government and a fundamental law.

Brackenridge's principal criticism of democracy -- a criticism that Gerry, Hamilton, and Morris had also made -- was that all too often the people elected incompetent men

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[5] Ibid., p. 426.

[6] Ibid., p. 21.

to important governmental posts. Hence he took as the moral of his book "the evil of men seeking office for which they are not qualified."[7]

To exemplify this prominent vice of popular sovereignty Brackenridge presented several election scenes. One of the Captain's first adventures on his peregrinations occurs at an election where the people are gathered to choose a representative for the state legislature.[8] The contest is at first between an educated man and an ignorant weaver named Traddle. Both the educated man and the Captain make speeches to the crowd on the evils of electing ignorant and untrained men to offices for which they are not suited. Then the Captain attempts to persuade Traddle that legislating is more difficult and important than counting thread and warping webs. Men should not attempt to do what is beyond their abilities. He points out to Traddle that he is no tumbler. He is too stiff. If he attempted to do tumbler's tricks, he would make a ridiculous spectacle of himself. "You would fall upon your backside to the ground."[9] Why, then, should the weaver aspire to be a legislator?

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[7] Ibid., p. 611. Newlin has pointed out that the heart of Modern Chivalry is political. Modern Chivalry, p. xxviii. He has also given an excellent brief exposition of Brackenridge's principal ideas -- his faith in and criticisms of the people. Ibid., pp. xxviii-xxxv.

[8] Part I, Vol. I, chapter 3.

[9] Modern Chivalry, p. 15.

At this point Teague offers himself as a candidate, and the people are delighted because there are several of his countrymen in the crowd, but especially because he is even more ignoble, even closer to them than the weaver. Again the Captain pleads with the crowd: Teague is not only illiterate; he can hardly speak English. He is only a bog trotter and body-servant. A free government consists in the equal right to make and to benefit from laws. But "though ... the lowest citizen may become chief magistrate; yet it is sufficient to possess the right; not absolutely necessary to exercise it."[10]

But the people are stubborn, insisting on making Teague their representative. They frown with displeasure at the Captain's suggestion that the plainest man cannot be as good a legislator as anybody.

> It is a very strange thing, said one of them, who was a speaker for the rest, that after having conquered Burgoyne and Cornwallis, and got a government of our own, we cannot put in it whom we please. This young man may be your servant, or another man's servant; but if we chuse to make him a delegate, what is that to you. He may not be yet skilled in the matter, but there is a good day a-coming.[11]

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[10] Ibid., p. 15.

[11] Ibid., p. 16.

So the Captain, since he cannot persuade the people, finally resorts to a stratagem which he uses many times later -- frightening Teague with an exaggerated account of the inconveniences and dangers of the office which he is seeking. After Teague has been warned that he will be the butt of the invective and scurrilous ridicule of editors, that he will be equally criticised whether he does or does not do something, that he will be as miserable as a treed racoon with boys jabbing at it from all sides, he withdraws from the race, resolving to forego the honor of being a legislator. The people then elect Traddle, the weaver, in preference to the more educated, better qualified man. Thus did Brackenridge illustrate not only the inability of the people to discern true merit and competence, but also their distorted concept of democracy, according to which the election of a superior man to office would be undemocratic.

Soon after this the Captain discovers another defection of the people at elections. Riding along a narrow, hedged road, he overtakes a man on his way to an election with two kegs of whiskey. The Captain wishes to avoid the election for fear of having trouble again with Teague, but is unable to take a side road or to cut across country because of the thick hedge, and hesitates, out of politeness, to reverse his course and leave his new companion

abruptly. So he is forced to continue on with him to the election. When they arrive, Teague immediately begins to solicit votes, and the Captain is worried for fear that he will lose his servant. But a Scotchman tells him that he need not worry; Teague will stand no chance against the man with the whiskey. "The man that has a distillery or two in our country, canna want suffrages," the Scotchman remarks.[12] But at this election for some reason Teague is not very successful anyway, even against the more intelligent candidate. When the time for voting arrives, the contest is between the man with the liquor and a man of grave countenance and years of experience. The people waver momentarily, and at first are inclined toward the abler man, almost as though they were guided by reason. "But appetite prevailed and they gave their votes in favour of the man with the two kegs of liquor."[13] Like Irving, Brackenridge accused the people of too often allowing the whiskey barrel and beer keg rather than the ability of the candidates to be the deciding factor in elections.

In addition to these election scenes, Brackenridge presents several episodes illustrative of the frequent inability of the majority to discern true merit. On one oc-

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[12] Ibid., p. 84.

[13] Ibid., p. 85.

casion Teague joins a band of frontiersmen in pursuit of some raiding Indians, thinking it unlikely that they will overtake the savages. When to his dismay the Indians are reported just ahead, he beats a hasty retreat, and while rushing pell mell down a hill, accidentally comes upon their encampment. Unable to stop in his headlong flight, he utters a scream of terror and desperation which the Indians mistake for the warwhoop of a large band of men. In their fright and haste to escape revenge, they flee, leaving all their booty behind them and Teague in possession of the field. When the rest of the whites come up, Teague fabricates an exaggerated tale of his valor, which is accepted without question. It is suggested that he be made a major general, and when he returns to the settlement, the people clamor for his appointment as one. Brackenridge then makes an observation on the inability of the people to perceive Teague's charlatanism:

> In a republican government, the honest souls of the people are lavish of their gratitude; though they sometimes mistake the merit or demerit of services. -- And how can it otherwise be when the people cannot themselves be all present to see what is done; nor, if they were present, and could see, are the bulk capable of judging in what cases success is to be attributed to design or execution... .[14]

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[14] Ibid., pp. 596-597.

It is small wonder, then, that so many incompetent men get in office.

This mischoice of the people is illustrated by Brackenridge on the many occasions when the people attempt to make Teague a judge. At one town meeting which the Captain attends there is a clamor for new judges, and Teague's name is of course proposed. The Captain attempts to reason with the people, as usual, contrasting Teague's oafish ignorance with the learning and discretion necessary in a judge, but all to no avail. The populace insists. So the Captain again resorts to frightening the bog trotter, this time by painting a lurid picture of the results of being broken from the bench (removed from office).[15]

In connection with these humorous examples of popular misrule, Brackenridge explicitly moralized on suffrage and elections, on the need for placing conscientious, intelligent, competent men in office. In a democracy, he urged, though all men have equal rights, they should attempt to do only what they are fitted for. It is no more necessary that every man should be a statesman than that every man should be a poet or painter. Hence the ignorant farmer or mechanic should not seek to rise in society by gaining a political position beyond his competence. Nor should the wealthy man necessarily attempt to gain office, for wealth does not qualify a man for office either. Ability, virtue, and intelligence are the only true qualifications.

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[15] Ibid., p. 393.

An empty head is bad in a responsible position, whether its owner is poor or rich.[16] "Genius and virtue are independent of rank and fortune."[17] In Brackenridge's opinion the only fit representative for the people was either "a plain man of good sense, whether farmer, mechanic or merchant; or a man of education and literary talents."[18] The failure of both rich and poor to choose this type of representative resulted in a vicious circle of bad elections. Since the aristocratic and democratic parties in society were opposed,

> ... when we see ... a Teague Oregan lifted up, the philosopher will reflect, that it is to balance some purse-proud fellow, equally as ignorant, that comes down from the sphere of aristocratic interest.[19]

In a democracy men should be advanced according to their ability and virtue, not according to their membership in a certain economic class.[20]

Other defects of the majority than merely its tendency to elect ill equipped men were exposed by Bracken-

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[16]Brackenridge, who was a Jeffersonian Democrat in politics, pursued this line in opposing the Federalist candidate for the House in the election of 1798. "... let John Woods," he advised, "reduce his mind within reasonable compass; let him wait till he is called upon for his services." Woods was ignorant, inexperienced, incompetent, he asserted. (The Aurora, July 28, 1798. Quoted in The Echo, p. 149) The article in which these statements occurred was satirized in Echo XIX.

[17]Modern Chivalry, p. 21.

[18]Ibid., p. 296.

[19]Ibid., p. 21.

[20]Ibid., pp. 530-531.

ridge. At a certain town meeting it was again proposed to make Teague a judge.

> Make him a devil, said a rash man, getting angry.
> A devil, let be then, said the populace; and while one went to get horns, and another hair, to make a tail, the bog trotter was left standing in the midst.[21]

Thus did Brackenridge illustrate a major defect of the majority, that it was fickle, unpredictable, ready to adopt any course of action no matter how absurd or harmful. The people were as easily influenced as sheep, he felt. Majorities shifted like the wind:

> In the multitude of a town meeting, or even in a whole community, it requires but a few persons stationed at convenient distances, and dispersed in due proportion, to raise a voice, and to call out in favour of a proposition, to give it currency, and acceptability. Every one fearing to be in the minority, will seize the opportunity of coming round to the majority.[22]

But the majority had worse vices than mere instability, according to Brackenridge. It had an actual appetite for falsehood, for preposterous, incredible error. Human nature was such, he believed, that the more extravagant any idea was, the more likely it was to be accepted at some times and in some places.[23] Wild ideas grow and spread in the body politic like a disease: "It is immaterial whether it is the common law that is to be abolished, or the right of suffrage extended to beasts. No matter what

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[21] Ibid., p. 589.

[22] Ibid., p. 712.

[23] Ibid., p. 700.

the innovation, it will have partizans."[24] To illustrate the vagaries of the multitude, Brackenridge made effective use of animals in his satire, as Cooper did later in The Monikins. He related how the people attempted to fill a clerkship with a monkey and to have a hound admitted to the bar. This latter incident served as an opportunity of both revealing the whims of the majority and mildly satirizing the legal profession by mentioning that he had heard one lawyer call another an impudent dog, that lawyers have been known to fight like dogs in court.[25]

In the course of this genial burlesque, Brackenridge remarked that electing beasts as representatives might not be without its advantages. A beast of the forest would not be concerned about what other beasts were saying of his speeches. He would be independent of his fellows running at large on the hills, for it would not occur to him that he was bound by their instructions and should not think for himself when he had a better opportunity of judging a matter than his constituents. Nor would a beast make long speeches to gain popularity and go to any length to retain his seat in Congress. However, at this point Brackenridge disavowed any intention of burlesquing representative government:

> I deny it ... it is to burlesque the abuses of elections, and of the elective franchise. -- If people go to employ a mechanic, or manufacturer of any sort, they look out for a capable person; one skilled in the art, or occupation, and with science and experience requisite for the thing to be made, or the object to be accomplished. But to

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[24] Ibid., p. 642.

[25] Ibid., pp. 702-703.

manage the nation, nothing more is sought than simply the being of a party; or the being capable of being made so by some master of the drama at home in a village or district.[26]

This denial was true. Pursuing his middle way between the extremes of democracy and of aristocracy, Brackenridge defended universal suffrage as the only practical foundation for a democratic government. Differing sharply from Adams, Hamilton, Madison, and Morris on this point, he spent many pages ridiculing the idea that there should be a property qualification for voting. The people of one community which the Captain visits argue this question thoroughly. Many problems arise. Should all forms of property or should soil alone vote? If soil, how much voting power should be given to fertile as opposed to barren soil? What about improvements on the land? Finally the people limit the property which is to vote to useful animals, and of those to animals of the best breed, such as the Virginia saddle horse. When the people bring their animals to the polls to vote, objections are raised by patriots because one man brings an English bull.[27]

Brackenridge had other objections to a property qualification for suffrage. If property were represented at all, intangible wealth would have to be recognized also. And this would raise insuperable obstacles. If any differences in suffrage rights were to be made, he would

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[26] Ibid., p. 663.

[27] Ibid., pp. 646-647.

favor those who had invented useful arts or made discoveries in mechanics, who had raised a large family or introduced a new breed of cattle; but not a usurer, or one who was idly enjoying rents from lands he had inherited.[28]

The problem of property rights and suffrage runs through the last volume of Modern Chivalry. Here Brackenridge asked if a property requirement for suffrage would give internal security, peace, liberty. No, he answered. Such a provision would inevitably lead to an aristocracy, for he who has much desires more.[29] The only safeguard for democracy is a completely unrestricted suffrage. For the unestated cannot be excluded without excluding also the wise and virtuous who are without estates. No good exists without some alloy of evil. Even freedom of speech and press have some disadvantages.

> It is doubtless a great evil that Tag-rag and Bob-tail, and who are so by indolence, should come to the polls with an equal voice, in the constitution of the government, with those who have a greater stake in matters of property; but it cannot be avoided without losing the principle that money is not virtue.[30]

Nor did Brackenridge believe that an intelligence test for voting was practicable. The only practical policy was to allow all male adults to assemble and vote. For who can say that another man lacks sense? "Intelligence cannot be weighed by the pound or ounce, or measured by the ell

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[28] Ibid., p. 696.

[29] Ibid., p. 695.

[30] Ibid., p. 696.

or the perch. Who is to make the selection from the mass?"[31] However Brackenridge did favor a higher age requirement for voting and holding office:

> The only qualification of which I can have any idea, as justifiable, is that of age; and I should have no objection to see this restricted to a greater age than that of 21, -- say 45 years. At this time men cease to be fit for the militia, or other ministerial services. Let them then become legislators, and have the right to vote in making laws, or chusing those that represent in making them. This would take off a great deal of wild-fire in our elections, and it would keep away vain young men from our public councils.[32]

Yet in the writings of this hearty democrat are to be found many echoes of John Adams and Alexander Hamilton. Most of these were the result of Brackenridge's fear of the fickle passions and shifting will of the multitude. For he thought a stable government essential to a peaceful, secure, just society and feared the popular demand for constant innovation. He was no ultra-conservative, wishing to maintain a static society. He considered a spirit of reform one of the signs of a healthy condition of the body politic, for there is need of reformation at all times.[33] But he feared that the people would not stop

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[31] Ibid., pp. 638-639. Brackenridge held that "Genius and virtue are independent of rank and fortune." Ibid., p. 21. He included farmers, mechanics and merchants among men of "good sense." Ibid., p. 296. Such was not the opinion of Fitz-Greene Halleck, New York sport, wit, and litterateur. See his Epistle to Robert Hogbin, Esq., Chairman of the Committee of Working-Men ... . in V. L. Parrington's Maincurrents in American Thought, II, 201-202.

[32] Ibid., p. 533. See also p. 764.

[33] Ibid., p. 486.

short of a complete revolution,[34] which he dreaded to contemplate. For though the "spirit of reform"

> ... is the angel that descends into the pool, and troubles the waters; so that he who stepeth in afterwards, is made whole ... troubling does not mean muddying the waters; but giving them motion, and exciting a current. ... The spirit of reform is terrible in its excess. It is a matter of great judgement to stay it at a proper point.[35]

How was this excess to be prevented? Brackenridge made frequent moral appeals in Modern Chivalry to his fellow citizens. He emphasized that a sense of responsibility was as important as legal restrictions in securing honest elections and urged that moral ideals be instilled into the young at school and at home. Democracy, he repeated again and again, must be based on strict honor, on scrupulous adherence to principle, on respect for others' rights:

> Democracy has its strength in strict integrity; in perfect delicacy; in elevation and dignity of mind. It is an unjust imputation, that it is rude in manners, and coarse in expression. This is the characteristic of slaves in a despotism; not of democrats in a republic. Democracy embraces the idea of standing on virtue alone; unaided by wealth or power of family. ... shall the democrat complain of usurpation; of undue influence; or oppression and tyranny from ambitious persons; and not be jealous, at the same time of democratic tyranny in himself, which is the more pernicious, as it brings a slur upon the purest principles?[36]

But Brackenridge was unwilling to trust to the goodness of human nature, to man's voluntary adherence to moral

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[34] Ibid., p. 382.

[35] Ibid., p. 486.

[36] Ibid., p. 404.

principles to maintain order in society. He recognized the need of a strong, stable government as well as a righteous people to accomplish this. He disagreed emphatically with Jefferson, who had firm faith in human goodness, who believed that the less government there was the better, who thought a revolution every twenty years salutary and desirable. Brackenridge put his disagreement with Jefferson into the mouth of Captain Farrago, who at one point addresses the people in disgust:

> Do you take me for Jefferson? You are mistaken if you think I have so good an opinion of you. I would ill deserve your confidence if I made your whims my guide; or regarded popularity obtained in such a way. It never came into my head that, because I had got the chair of government, there was a millenium about to come, when all men would do justice, and there would be no occasion for judges and lawyers; nations could be coerced by proclamations; and no war would ensue.[37]

This exaggeration of Jefferson's principles is an effective contrast of his position with that of Brackenridge.

The means which Brackenridge proposed to preserve a stable government, to insure justice, to preclude "democratic tyranny" were the very devices that the Federalists advocated as checks on the majority -- a balanced government with its powers in separate branches, and a fundamental law interpreted by an independent judiciary.

By "democratic tyranny" Brackenridge meant precisely what Adams, Hamilton, Justice Chase, and the other Federalists meant by "the tyranny of the majority." He meant the

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[37] Ibid., p. 783.

use of political power by a simple majority to do whatever it wished, whenever it wished, without regard to any higher law, without respect for the vested interests of individuals or minorities. And like Federalists, he associated such majority rule with individual insecurity. Yet he never doubted that there was a better chance for justice to the individual in a democracy than in an aristocracy or despotism.[38] He felt, however, that it was "the rage of mere democracy that has brought reproach upon republicks; that democratic power unbalanced, is but the despotism of many instead of one. It is the balancing with stays and braces of distributed powers that gives safety."[39] The construction and preservation of such a government, according to Brackenridge, was a difficult task, an occupation worthy of the best minds. And yet the majority of people thought that they were as capable of forming a government as anyone. In reality, however, it was not "a matter to which the bulk are competent."[40] Brackenridge denied that he intended any "reflection upon a democratic government" by such criticisms but only the exposition of its errors and excesses. "These excesses have shown themselves in all democratic governments; whence it is that a simple democracy has never been able to exist long."[41] This statement might have been ta-

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[38] Ibid., p. 740.

[39] Ibid.

[40] Ibid.

[41] Ibid., p. 507.

ken right out of John Adams or Fisher Ames.[42] By a "simple democracy" he seems to have meant, as did Adams and Madison, a direct rule of the people without representatives. In such a government the will of the majority would have unlimited sway. To illustrate the necessity of representative government and of the formulation of constitutions by experts, Brackenridge introduced an incident showing the futility of all attempts at direct legislation by the people. In the state where the Captain is governor the people decide to change their constitution. All who wish to participate in the alteration are invited to assemble and do so. On the appointed day the hills are covered with thousands of people who shout back and forth, up and down at each other, and make the convention a mere babble of confused voices. Nothing can be accomplished. But as hunger, fatigue, and lack of interest gradually eliminate more and more men, the assembly becomes more and more orderly, until finally, when only twenty are left, the outline of a constitution, no better than the old one, is drawn up.[43] Brackenridge thus used this incident to hit at the frequent revision of state constitutions after the Revolution as well as to satirize simple democracy.[44]

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[42] Cf. p. 101 above.

[43] Ibid., pp. 638-640.

[44] Cf. Allan Nevins, op. cit., pp. 171-205. "The years immediately following the drafting of the first Constitutions were a period of rapid experiment and change. By 1800 the sixteen States then composing the Union had adopted twenty-six Constitutions. The year 1793 found three, New

But sound democratic government, in Brackenridge's opinion, was not only representative rather than direct. It was also balanced; its powers were separated in its various branches. The American government was thus an experiment based on sounder principles than those of a simple democracy; it was founded on

> ... representation and a more perfect separation, and near equipoise of the legislative, judicial, and executive. But the balance of powers, is not easily preserved. The natural tendency is to one scale.[45]

Many ardent, sincere democrats forgot the need for a balanced government, for moderation in majority rule. Brackenridge believed that the bulk of the French Jacobins, probably even Marat and Robespierre, meant well. But they were gradually forced to take extreme, bloody measures by their assumption that a majority vote was the sole criterion of right and that all who opposed the majority were traitors.

> The mountain, the bulk of the national assembly, could not but be in their opinion, infallible. ... It was a mountain pregnant with subterranean fire. It burst, and exists a volcano to this day. So much for the majority of a public body, being always right ... .[46]

It was necessary for democracy to pursue justice according to absolute principles of morality,[47] but the

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Hampshire, Vermont, and South Carolina, under their third form of organic law, and four others, Massachusetts, Pennsylvania, Delaware, and Georgia, under their second." Ibid., p. 171.

[45] Modern Chivalry, p. 507.

[46] Ibid., p. 425.

[47] Ibid., p. 426.

will of the simple unchecked majority was inadequate to achieve this end, Brackenridge held, for the majority could not be trusted to obey the moral law. A fixed basic law, or constitution, establishing a balanced government, was the only effective means of protecting individual rights and of restraining the unruly passions of man, which were constantly attempting to break through the bonds of government. By a constitution Brackenridge meant "that organization by which a man is governed by rules that apply to every individual of the community; and from which no one is exempt, but all bound to obey."[48] But since men were restless, refractory, unwilling to submit to government, they sought to weaken government by proposing to change its form, when in reality it was not the form of government, but being governed at all that displeased them. But if these constant demands for change were met, disaster would result, Brackenridge warned. For a constitution that was constantly being changed was no constitution at all in his opinion; it lacked permanence, the essential characteristic of a good constitution, and gave security to no man.

> The changing a constitution begets the desire of change, and like a dislocated bone, must produce a weak joint. It ought to be some great defect that would justify a change. The one half the effect of laws or general rule, is the being acted under. It injures a saddle horse to put him in harness; because he must change his gaits.[49]

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[48] Ibid., p. 765.

[49] Ibid., p. 675.

Brackenridge emphasized the need for a permanent constitution in a lecture which the Captain gives Teague. The Captain, as governor, is petitioned by the people to cooperate in changing the constitution radically by amendment, since this way is easier than to form an entirely new one. It is demanded that the sitting of the people in convention be permanent and the constitution revolutionary "so that whenever, and wherever the shoe" is "found to pinch, it might be altered."[50] In other words, there would be no constitution, for there would be no permanent, basic law. The simple majority would work its will as it pleased with no restrictions. Teague is foremost among the malcontents with the old constitution and loudest in demanding that a convention of the whole people be called to amend it. The Captain rebukes him sharply for his effrontery in proposing that he, an illiterate Irishman ignorant of the genius of the American people, should play a major part in the formation of a new constitution:

> Can a bog-trotter just from Ireland like you be supposed to be cognizant of the genius of the people sufficiently to form a constitution for them? Is it the most delicate thing in the world to undertake to find fault with that which they have formed? [sic] I feel it on my part a matter of peculiar delicacy to sport an opinion. It hurts me even that you lately in my train should cavil against it, lest it should be supposed to be at my prompting.[51]

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[50] Ibid., p. 748.

[51] Ibid., p. 749.

The Captain warns Teague that he has not considered where the attempts of such ignoramuses as he to alter governments whenever they wish inevitably lead. In France, he tells him, they led to the guillotine, a terrible, cutting, tearing instrument, a combination of a crowbar, harrow, and saw, under which victims are punished.

> The meddler with constitutions is in danger of coming under it. A regular tenor of things is the safest condition. In order to be safe from the irons of a saw mill, let the unskilful beware of meddling with the wheels.[52]

Teague, as usual, immediately loses all stomach for his proposed venture. But the people continue "to urge the bog-trotter to a perseverence in his endeavours in favour of what they called liberty."[53]

Thus did Brackenridge illustrate that a constitution was the _sine qua non_ of true democracy, that simple democracy, lacking one, inevitably led to tyranny and violence, that only the uninformed multitude led by ignorant blockheads could demand the abolition of such an essential guarantee of their rights.

Since the people needed restraints on their whimsical will, Brackenridge believed that often their best

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[52] _Ibid._, p. 750.

[53] _Ibid._

friend was he who opposed them, whether a judge, a senator, or an executive:

> I grant that it is not the way to make money of the people, to oppose them, but it is the way ultimately to make friends of them, and to have their confidence. Let school boys propose to rob a hen-roost, they will respect him who dissuaded, though it was not popular, but incurred the imputation of cowardice, and a want of spirit, at the time. Let them rob a garden, and be brought to punishment, they will revere him who had told them it was wrong but was hurried along with them, and suffered by their fault. ... Great is the force of truth, and it will prevail. It requires great courage to bear testimony against an error in the judgment of the multitude; as it is attended with present disreputation. Yet courage is virtue, and is its own reward.[54]

In his questioning and opposing the popular will, Brackenridge considered himself radically different from Jefferson.[55] Since he lacked Jefferson's faith in the popular will, he considered Jefferson's attack on the judiciary the most serious error of his administration, for the federal judiciary was both a check on the majority will and "a cingulum to bind the states; the belt of Protagoras, to keep together the bundle of sticks which had been so well arranged by the constitution."[56] The popular cry against lawyers and the courts was as mistaken as Jefferson's attack on the judiciary. The ignorance of the multitude as

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[54] Ibid., p. 382.

[55] Cf. p. 207 above.

[56] Ibid., p. 786.

to the need for laws and lawyers is epitomized by a member of a crowd which demands a change in the constitution:

> Can there be any thing more simple than for the people just to govern themselves? What needs all this talk of checks and balances? Why keep up laws, and judges, at an expence, as if the people were not competent to give laws, and to judge for themselves?[57]

A lawyer and judge himself, Brackenridge answered that codes of laws such as the Roman law and the English common law were the products of the experience and wisdom of ages, designed to protect human rights, especially the important right of property. And learned experts were needed for their exposition and elucidation. "So that the disuse of lawyers, judges, and courts, or superseding the necessity of them by novel institutions, is what will be found impracticable consistent [sic] with government."[58]

Brackenridge proposed judicial review of legislative acts in the light of the constitution by the federal courts as an essential and effective check on an irresponsible and shifting majority. He admitted that "... the power of the judiciary, to adjudge a law void on the ground of unconstitutionality" was a difficult problem of

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[57] Ibid., p. 508.

[58] Modern Chivalry, p. 565.

government, bearing both on individual rights and on the general welfare.[59] But he took the Federalist side in this question of the hour and defended judicial review,[60] finding classical authority for the practice in the travels of Anacharsis the younger, from whose account of the Athenian government he quoted:

> Amidst the multitude of decrees, we see from time to time enacted with the sanction of the Senate, and the people, some there are in manifest contradiction to the welfare of the state, and which it is important not to suffer to subsist. But, as they were the acts of the legislative power, it should seem that no authority, no tribunal is competent to annul them. The people themselves should not attempt it, lest the orators who have already taken them by surprise, should again mislead them. What resource then shall there be for the republic? A law singular indeed at first sight ... the law that authorizes the very lowest citizen to appeal from a judgment of the whole people, whenever he is able to demonstrate, that the new decree is contrary to the laws already established.
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> In these circumstances, it is the invisible sovereign, it is the laws which loudly protest against the national judgment that has violated them; it is in the name of the laws that the accusation is brought forward; it is before the tribunal, which is the chief depositary and avenger of the laws, that it is prosecuted; and the judges by setting aside the decree, only pronounce that the authority of the people has happened to clash unintentionally with that of the laws; or rather they maintain the ancient and permanent decisions of the people against their present and transient inclinations.[61]

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[59] Ibid., p. 566.

[60] Part II, Volumes I and II of Modern Chivalry from which most of these quotations on the judiciary are taken, came out in 1804 and 1805. Marshall handed down his decision in Marbury vs. Madison in February, 1803.

[61] Ibid., pp. 566-567. Compare the Senate Judiciary Committee's remarks in 1937 on judicial review and the Su-

This is the purest Federalism.[62] It is in the Hobbes-Burke tradition of governmental sovereignty, for it makes the

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preme Court's independence of the majority will. The Committee denied that the court may be influenced or altered to "... give effect to the desires of the majority." The New York Times, June 15, 1937, 18:8. Speaking of unconstitutional acts of Congress, the committee said, "A citizen has the right to appeal to the Constitution from such a statute. He has the right to demand that Congress shall not pass any act in violation of that instrument, and, if Congress does pass such an act, he has the right to seek refuge in the courts and to expect the Supreme Court to strike down the act if it does in fact violate the Constitution. A written constitution would be valueless if it were otherwise." Ibid., 19:3.

[62]This passage might have been written by Hamilton or Marshall. It is closely similar to certain passages of The Federalist LXXVIII (cf. pp. 63-64 above) and of Marbury vs. Madison. Wrote Marshall: "The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. ...

"That the people have an original right to establish, for their future government, such principles, as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it, to be frequently repeated. The principles ... so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent.

"This original and supreme will organizes the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments.

"The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten the constitution is written. ...

"The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level

permission of the existing government necessary for any fundamental change in government. Ultimate power does not reside in the people. Brackenridge's appeal to the "ancient and permanent decisions of the people against their present and transient inclinations" relies on an old political fiction, the eternity of ancestral decrees preserved in a constitution to which all generations succeeding the framers of this constitution are bound.[63]

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with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

"If the former part of the alternative be true, then a legislative act contrary to the constitution, is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable. ...

"If an act of the legislature, repugnant to the constitution, is void, does it ... bind the courts, and oblige them to give it effect? ...

"It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts, must decide on the operation of each. ...

"If, then, the courts are to regard the constitution, and the constitution is superior to any act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply." The Constitutional Decisions of John Marshall, ed. J. P. Cotton, Jr. 2 vols., New York and London, 1905, I, 37-40.

[63]Jefferson hotly disagreed with Brackenridge and Marshall on this point: "Some men look at constitutions with sanctimonious reverence, and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. I knew that age well; I belonged to it, and labored with it. It deserved well of its country. It was very like the present,

To make this fiction plausible, Brackenridge, like Hamilton and Marshall, identified the people of the present who have "transient inclinations" with the people of the past who made the "permanent decisions."[64] Against this fictitious identification John Taylor and Thomas Jefferson inveighed intensely. Such arguments undoubtedly in-

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but without the experience of the present; and forty years of experience in government is worth a century of book-reading; and this they would say themselves, were they to rise from the dead. I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfections had better be borne with; because when once known, we accommodate ourselves to them, and find practical means of correcting their ill effects. But I know also, that laws and institutions must go hand in hand with the progress of the human mind." Letter to Samuel Kerchival, July 12, 1816, The Writings of Thomas Jefferson, ed. H. A. Washington, 9 vols., Washington, D. C., VII, 14-15.

[64]Daniel Webster identified the people of 1787-1788 with the people of 1848 in a speech delivered before the Supreme Court in the case of Luther vs. Borden in 1848. The case arose out of Dorr's Rebellion in Rhode Island. Under the American system, plead Webster, the people limit the government, "... but it is another principle, equally true and certain, and, according to my judgment of things equally important, that the people often limit themselves. They set bounds to their own power. They have chosen to secure the institutions which they establish against the sudden impulses of mere majorities. By the fifth article of the Constitution of the United States, Congress, two thirds of both houses concurring, may propose amendments of the Constitution; or, on the application of the legislatures of two thirds of the States, may call a convention; and amendments proposed in either of these forms must be ratified by the legislatures of three fourths of the States." The Writings and Speeches of Daniel Webster, 18 vols., Boston, 1903, XI, 224-225.

spired Jefferson's statement that "... the earth belongs in usufruct to the living; that the dead have neither powers nor rights over it."[65] Like all exponents of judicial review, Brackenridge assumed as his major premise that the judges know the basic law better than the legislators and that they also know better what is for the general welfare and what is not.[66]

A free government, therefore, and the exclusion of lawyers and judges could not be reconciled, in the opinion

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[65] J. M. Jacobson, The Development of American Political Thought. A Documentary History, New York, 1932, p. 270.

After Marshall's decision in Marbury vs. Madison, Jefferson frequently expressed his disapproval of judicial review and fear of the power which it gave the judiciary. It made the American government undemocratic, he felt:

"The great object of my fear is the Federal Judiciary. That body, like gravity, ever acting, with noiseless foot, and unalarming advance, gaining ground step by step, and holding what it gains, is engulfing insidiously the special governments into the jaws of that which feeds them."

"It is a very dangerous doctrine to consider the judges as the ultimate arbiters of all constitutional questions. It is one which would place us under the despotism of an oligarchy ... The Constitution has erected no such single tribunal, knowing that to whatever hands confided, with the corruptions of time and party, its members would become despots." Quoted by V. L. Parrington in Main Currents in American Thought, I, 383.

[66] Cf. E. S. Corwin: "In the last analysis, the doctrine of judicial review involves 'an act of Faith,' to wit, the belief that the judges really know the standing law and that they alone know it." The Doctrine of Judicial Review, Its Legal and Historical Basis, and Other Essays, Princeton and London, 1914, p. 63.

of Brackenridge. He deplored the popular prejudice against lawyers and the demand for the removal of judges who opposed the temporary whims of the people.[67] For the overthrow of a judiciary tribunal would endanger liberty because

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[67]The functions and independence of the judiciary were bitterly debated by Federalists and Republicans from January, 1802, when the movement to repeal the Judiciary Act of 1801 was begun, till long after the trial and acquittal of Justice Chase by the United States Senate. This party battle was carried into the states also. Judge Alexander Addison, whose doctrines were approved by Fessenden (cf. p. 136 above), was impeached, tried, convicted, and removed from office in the State of Pennsylvania. Brackenridge was accused of playing a major role in the removal of Addison because of personal and political enmity. Dennie strongly implied that Brackenridge was moved by personal malice; he assumed that Addison's punishment would be no more severe than removal from office, "... unless indeed Thomas M'Kean, Hugh Brackenridge, or John B. Lucas, have some private cause of offence, for which they may wish to bring Mr. Addison before a jury of the country." The Portfolio, III, 46, (Feb. 19, 1803). Brackenridge's alleged personal hatred of Addison was also brought out in the trial: "In last week's Tree of Liberty there appeared an account of the prosecution lately attempted by John Lucas against judge Addison in the supreme court of Pennsylvania. This account is evidently the work of judge Brackenridge, as it is replete with falsehood and malicious invective against the man he so much envies and hates." Trial of Alexander Addison, Esq. ..., p. 66. Cf. also A. J. Beveridge, The Life of John Marshall, III, 47, n.

But Brackenridge's views on the function of the judiciary were nevertheless quite similar to those of his political adversary. A political judge and an ardent Federalist, Addison in his speech of defense gave expression to an extreme theory of balanced government and surrender of sovereignty by the people, a much less democratic interpretation of sovereignty and constitutions than Brackenridge would have agreed to: "No principle, not even the principle of representation itself, goes deeper into the constitution of a free Government, than that of an inde-

it would weaken an essential branch of the government. If such an important branch as the judiciary were broken off, the entire tree of government would be affected. A balance could not long be maintained even though the execu-

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pendent judiciary ... . Laws derive their force only from their execution, and, without an independent judiciary, to administer the laws, they become nugatory, or may be converted into instruments of oppression. ...

"In a republican government like ours, the sovereignty is broken into parts, and distributed to different branches. And though our government be founded on the important principle, that sovereignty is in the people; when a constitution is adopted, the people is no longer sovereign. They have then laid down their sovereign power; they are subjects to the constitution; they have retained but part of the sovereignty; they are but a branch of the government; they are the elective branch; and, in other parts of the sovereignty, they are subject to the other branches, the legislative, the executive, and the judiciary: and all are subject to the constitution. In this manner does the constitution protect the liberty of the citizen against any arbitrary power in the whole people ... . The people are sovereign and independent in the elective branch; the Legislature, in the legislative; the judiciary in the judicial; and the executive, in the executive branch of the government. There is no superiority in any one over any one other, in the exercise of its own functions." Addison Trial, pp. 107-108 of Addison's defense, which is placed after p. 123 of the proceedings of the trial and is numbered from 101, as an appendix.

In the debate which occurred in the Senate in 1802 over the repeal of the Judiciary Act of 1801 Gouverneur Morris of Pennsylvania and Stevens Thompson Mason of Virginia tilted with each other. Morris made use of the Federalist arguments of the need of checks on the majority and of the efficacy of the judicial branch as such a check through its interpretation of the basic law: "Governments are made to provide against the follies and vices of men ... . Hence checks are required in the distribution of powers among those who are to exercise it for the benefit of the people." The most effective check was an independent judi-

tive and legislative branches remained intact, and within the legislative branch, the Senate and House of Representatives. For the house, being by far the strongest remaining branch, would, like Aaron's rod, swallow up the others. The executive would be a tool of the house and the senate would be abolished. The talk in his day of abolishing the senate alarmed Brackenridge, since he believed that the madness of the people under straight majority rule led inevitably to despotism. The people "are not always aware

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ciary, "... a check of the first necessity, to prevent an invasion of the Constitution by unconstitutional laws -- a check which might prevent any faction from intimidating or annihilating the tribunals themselves.

"What has been the ruin of every republic? The vile love of popularity. Why are we here? To save the people from their most dangerous enemy; to save them from themselves." Beveridge, op. cit., III, 60-61.

"Should all else fail," Morris continued, "'the Constitution has given us ... an independent judiciary,' which if 'you trench upon the rights of your fellow citizens, by passing an unconstitutional law ... will stop you short.' Preserve the Judiciary in its vigor, and in great controversies where the passions of the multitude are aroused, 'instead of a resort to arms, there will be a happier appeal to argument.'" Morris would rejoice in any mischief which the Supreme Court might do if it blocked "... the Legislative or Executive departments in any wanton invasion of our rights ... . I know this doctrine is unpleasant; I know it is more popular to appeal to public opinion -- that equivocal, transient being, which exists nowhere and everywhere." Ibid., p. 65.

Mason taking the other side, expressed fear lest the judges "... hold the Constitution in one hand, and the law in the other, and say to the departments of Government, so far shall you go and no farther." He was "... alarmed lest 'this independence of the Judiciary' shall become 'something like supremacy.'" Ibid., p. 64.

when they are planting serpents teeth," he warned; and he traced "the emperor that now affects the French" to the "mountain of the national assembly."[68]

Although Brackenridge never explicitly stated, as did Adams, that the senate was to represent the aristocratic class in society, his opinion that it was an essential branch of a balanced government, necessary to check the majority, strongly implies this when considered in relation to certain remarks of his on the opposition between economic classes.

> ... there is in every government a patrician class, against whom the spirit of the multitude naturally militates: And hence a perpetual war; the aristocrats endeavouring to detrude the people, and the people contending to obtrude themselves. And it is right it should be so; for by this fermentation, the spirit of democracy is kept alive.[69]
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> ... the aristocratic part of the government, arrogates a right to represent; on the other hand, the democratic contends the point; and from this conjunction and opposition of forces, there is produced a compound resolution, which carries the object in an intermediate direction.[70]

The context of the above passages deals with elections. So apparently Brackenridge was referring to the election

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[68] Modern Chivalry, p. 449.

[69] Ibid., p. 19.

[70] Ibid., p. 21. Newlin states that Brackenridge "... saw political life as a class struggle." Modern Chivalry, xxxi. In this he was like John Adams.

of compromise candidates or of nearly equal numbers from both parties. He did not clearly explain just how the balancing process was carried out by the various organs of government. He did not associate any particular class with any particular branch of government. Apparently he thought that the people played an important part in the election even of senators, in spite of the fact that senators were not popularly elected in his day but were elected by the state legislatures. Brackenridge's view of the senate was therefore much more realistic and accurate than Adams' fiction that the senate represented the aristocrats, the house the multitude, with the president acting as a balancing tertium quid. Brackenridge hinted that through the influence of the people incompetent senators were often placed in office in spite of the precautions taken in the Constitution to make their election indirect.

> ... there is a certain pride in man, which leads him to elevate the low, and pull down the high. There is a kind of creating power exerted in making a senator of an unqualified person; which when the author has done, he exults over the work, and like the Creator himself when he made the world, sees that "it is very good."[71]

Brackenridge may have been referring to the election of state senators in this passage. At any rate there was some

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[71] Ibid., p. 19.

relationship in his mind between the class rivalry which he described and the balanced government which he recommended, even though this relationship was not clearly conceived or explicitly stated. For somehow such essential branches of the government as the Senate and Supreme court preserved a balance between the aristocratic and democratic elements in society and thus restrained the caprices of the majority. The stress which Brackenridge laid on balanced government and on constitutional majority rule, and the similarity of his views to those of Adams and Hamilton support the inference that he related balanced government and social classes, however vaguely. Perhaps the reason for this vagueness was that Brackenridge thought that the balancing of classes in a government was less important than that the government should be composed of able men, that intelligence rather than wealth was the true qualification for political office. Perhaps he only hoped that the struggle between the aristocratic and democratic elements in society would result in the election of more competent men. The two houses of Congress, the presidential veto, and the Supreme Court would then eliminate any proposed laws that might be harmful to the nation or to minorities.

One reason why Brackenridge felt that these checks and balances were necessary was that, like his Federalist

political opponents, he feared the influence of demagogues on the people under a democratic government. The influence of demagogues on the majority if it were given complete freedom to work its will had been one of the chief conservative bugbears since before the constitutional convention. Elbridge Gerry[72] and Colonel Mason[73] were among those at the convention who explicitly warned of the opportunity which unrestricted majority rule would give to demagogues. Fisher Ames, of course, wrote many a jeremiad on democracy as the spawning ground of demagogues.[74] And Fessenden repeatedly called the Jeffersonians demagogues.[75] The power of demagogues, then, was one of the chief evils to be expected from majority rule, one of the chief reasons for placing checks on the majority.

Just what kind of person was a demagogue? At various points in Modern Chivalry Brackenridge describes the characteristics of the demagogue. Although the descriptions are somewhat scattered, the total result is a fairly

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[72]Farrand, Records, II, 57. See p. 45 above.

[73]Farrand, II, 273. See p. 46 above.

[74]Ames, Works, II, 393. See p. 106 above.

[75]Fessenden, Democracy Unveiled, p. 124, n. See p.145 above.

complete picture of this political excrescence. According to Brackenridge, the demagogue is an opportunist who seeks his own good at the public expense. He endangers democracy because he attempts to destroy the all-important equilibrium of government by subverting the constitution. "The demagogue is the first great destroyer of the constitution by deceiving the people."[76] He uses the same arts of deception at all times and in all places:

> The laws are a standing butt of his invective. He cannot be a sage, or a legislator; and therefore must find fault with those that are. ... The oppression of the laws, and the inequality of justice to the poor, are the usual themes of his declamation.[77]

The demagogue is a master of stratagem:

> How do demagogues deceive people? How do you catch a nag? You hold a bridle, in your left hand, behind your back; and a hat in your right, as if there were something in it, and cry cope. What do demagogues want by deceiving the people? To ride them. What do they pretend they have in the hat? oats, salt, any thing they find a horse likes.[78]

The demagogue can be distinguished from the patriot by his flattery of the clown and carping at the sage. According to the demagogue the people are always right. Vox populi,

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[76] Modern Chivalry, p. 507.

[77] Ibid., p. 525.

[78] Ibid., pp. 414-415.

vox Dei, he chants. The result of this flattery might easily be that an ignorant uninformed spirit of reform would prevail until representative government would be destroyed. The judiciary, the senate, the executive would be abolished in the order named, without anyone (but the demagogue) intending that they should be. A legislature of only one house would remain, the demagogue and the few would soon gain control of it, and tyranny would result. The demagogue is no friend of democracy. He is clad in sheep's clothing, but inwardly is a ravening wolf. "He is no democrat that deceives the people. He is an aristocrat; and seeks after more power than is just. He will never rest short of despotic rule."[79]

Such was Brackenridge's picture of the pernicious influence of demagogues. In his book he gave no example of a complete demagogue in any of his characters. Teague lacks the calculating, crafty, unscrupulous intelligence of the true demagogue. He does not hold out a hat and cry "cope, cope" to the people. He is willing to accept any office that is offered to him, to participate in any movement that might be to his advantage, however it might affect the general welfare. But he has only some of the

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[79] Ibid., p. 507.

qualities of the demagogue -- chiefly disregard for the public good. Teague is too much the oaf, the clown, to qualify for the part.

Brackenridge illustrated the need for constitutional processes of government and respect for the law in the tarring and feathering of Teague by the mob. Teague has been appointed an excise officer and goes into the back country to perform his duties. The people, who are opposed to any form of taxation, assemble in a mob and prepare tar and feathers to make an example of Teague for any other tax collectors who may consider coming that way. Teague, sensing that he is in danger, denies that he is the excise officer and says it is a nearby Scotchman. But the Captain assures the crowd that it is Teague, not the Scotchman, and expostulates with them to obey the law of the land.

> Is it not a principle of that republican government which you have established, that the will of the majority shall govern: and has not the will of the majority of the United States enacted this law?[80]

One of the leaders of the crowd comes forward at these words, all the preparations having been made.

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[80] Ibid., p. 304.

> The will of the majority, said he; yes, faith; the will of the majority shall govern. It is right that it should be the case. We know the excise officer very well. Come lay hands upon him.[81]

This incident exemplifies the kind of illegal, unrestricted, capricious majority rule which Brackenridge had observed around Pittsburgh and which he so severely censured. His treatment of the backwoods majority in Modern Chivalry reflects his experiences as mediator with the Whiskey Boys during the Whiskey Rebellion. It was a fundamental principle of republican government, he thought, that the majority should rule; but it should rule through legal forms, according to a fixed, secure constitution, not as a mob.

Brackenridge's views, then, were a compound of Federalistic theories of balanced government and checks on the majority and of the truer democracy of the Jeffersonian party. When he considered democracy in comparison with such other forms of government as aristocracy[82] and absolute monarchy,[83] he embraced it unreservedly as the most perfect, "... the freest government, because under this,

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[81] Ibid.

[82] Ibid., p. 426.

[83] Ibid., p. 740.

every man is equally protected by the laws, and has equally a voice in making them."[84] But his experience with the defects of democracy in western Pennsylvania caused him to hesitate in embracing the central article of the democratic faith, the sovereignty of the majority. And he qualified his faith in majority rule in Federalistic terms.

Brackenridge's politics, considering his opinions on this subject, were somewhat irregular. His oft reiterated preference for the rule of the many to the rule of the few, his failure to dwell on the collision of economic class interests in America, his defense of universal suffrage and ridicule of property qualifications, his lack of respect for inherited wealth and for an aristocratic, landed class, his denial that wealth was identical with wisdom, virtue, and ability, all these characteristics, it is true, distinguish him sharply from Adams, Hamilton, Ames, and even from Madison, and place him in the democratic camp with Franklin, Wilson, and Jefferson. But his distrust of actual (so-called simple) majority rule, his desire for a balanced government, especially for a permanent constitution and for judicial review are decidedly Federalistic and align him with Adams, Hamilton, and Marshall. Although he

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[84] Ibid., p. 20.

asserted that the people should rule and that ultimate power rested with them, he proposed and defended a type of government that removed the sovereignty from the people by giving a minority the power to obstruct the majority will. This was the effect of his balanced government and judicial review. Affirming his democratic principles, he attempted at the same time to keep a government based on popular sovereignty within the bounds of a fixed basic law. Herein, being in fundamental agreement with the Federalists, he was an anomalous figure in the Democratic-Republican Party.

CHAPTER V

THE SWAN SONG OF FEDERALISM

Historical Background, 1800-1830

After the violent reactionary outburst against Jeffersonianism which occurred between 1790 and 1810, after Fessenden and Dennie had exposed the malignancy of the majority and Brackenridge its mistaken excesses, after Irving had poked playful fun at democratic elections, the next important expression of conservative opinion on the majority principle occurred in connection with the revision of the older state constitutions, in particular those of Massachusetts, New York, and Virginia. The original thirteen states had republican but undemocratic constitutions in 1789, when the Federal Government began to function,[1] for they were all ruled by a small minority rather than by the majority.

The state governments were undemocratic at this time for several reasons. The first was that the ownership of some property, usually a small freehold, was uni-

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[1] J. B. McMaster, A History of the People of the United States, from the Revolution to the Civil War, 7 vols., New York, 1901, V, 373; cf. also, H. C. Hockett, The Constitutional History of the United States, The Blessings of Liberty, New York, 1939, pp. 123-129.

versally required for suffrage. This provision in the state constitutions denied a voice in the government to thousands of free white males over twenty-one.[2] A second reason was that property (and also religious) qualifications for office existed, increasing with the importance of the office "... till it became absolutely impossible for a poor man to become a candidate for the State Senate or the governorship."[3] A third reason that the state governments were undemocratic was the way in which representation in the legislatures was assigned to the various sections of the states. Proportional representation according to population was unheard of. Representation was allotted in one of two ways, either according to the amount of taxes paid by each county, as in Massachusetts and New Hampshire, or equally to the counties, regardless

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[2]"... no man voted who did not pay a property tax, or rent a house, or own a specified number of acres of land, or have a specified yearly income." McMaster, op. cit., V, p. 377.

For example, in New York before 1821, only those who owned a freehold valued at twenty pounds, or who paid rent on a tenement amounting to forty shillings annually, or who had paid taxes to the state could vote for a member of the assembly. To vote for senator or governor, one had to own a freehold worth one hundred pounds or over. Ibid., p. 383. To vote in Virginia before 1830 one had to own twenty-five acres of improved land or fifty acres of unimproved, or to possess a freehold or estate interest in a town lot or part of a town lot. Ibid., pp. 392-393.

[3]Ibid., p. 377.

of their size or population, as in New Jersey, Delaware, North Carolina, and Virginia. Thus towns and districts were represented instead of people.[4] Another undemocratic provision of the state constitutions, a provision which aided in effectually controlling the majority, was the election of the executive by the legislature.[5] An examination of the early state constitutions reveals that the delegates to the Federal Convention in 1787 merely proposed that the same provisions be included in the Federal Constitution as already existed in the state constitutions, for the same purpose, namely, the control of the majority by the minority.

It was not long, of course, under such conditions of government, before the underprivileged began to clamor for revision of the state constitutions in order that they might enjoy the rights to which democracy entitled them. An important factor in bringing about such reforms was the democratic character of the constitutions of the new states which were admitted to the Union between 1790 and 1830. These states led the way to complete political democracy by providing in their constitutions for universal suffrage and proportional representation of counties according to

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[4] Ibid., p. 376.

[5] Ibid., p. 377.

their population. Vermont, admitted to the Union in 1791 as the first new state, was the first to grant suffrage to all taxpaying males over twenty-one, and her example was soon followed by Kentucky in 1792 and Tennessee in 1796. The new states formed in the west after 1812 went even farther. They all

> gave evidence in their constitutions of the democratic spirit of the frontier. With the exception of Mississippi, where the voter was obliged either to be a taxpayer or a member of the militia, all the western states entered the Union with manhood suffrage, and all of them, in contrast with the south, from which their settlers had chiefly been drawn, provided that apportionment of the legislature should be based upon the white population, thus accepting the doctrine of the rule of the majority rather than that of property.[6]

Encouraged by such examples, the disfranchised and unrepresented citizens of the older states demanded revision of their constitutions to provide broader suffrage and representation according to population. And their demands were met. New Jersey in 1807 and Maryland in 1810 abolished the traditional property qualification for suffrage.[7] Connecticut, in her constitution of 1818, allowed manhood

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[6]F. J. Turner, Rise of the New West 1819-1829 (The American Nation: A History, ed. A. B. Hart, 28 vols., XIV), New York and London, 1906, p. 67.

[7]McMaster, op. cit., V, 379-380.

suffrage and apportioned representatives according to population so that people, not towns and districts, were represented.[8] Similar reforms, in varying degrees, were achieved in Massachusetts and New York in 1821 and in Virginia in 1830.[9]

Such was the power of the example of the new west in America in the early nineteenth century. It accelerated the growth of democracy in the east. It was the dynamic force in America, the force that made America unique in history.[10] The changes wrought in the eastern state constitutions, brought about by the influence of the west, was only one thing that made "the rise of the new west ... the most significant fact in American history in the years immediately following the War of 1812."[11] The west was the most characteristically American section of the nation.

In these new western lands Americans achieved a boldness of conception of the country's destiny and democracy. The ideal of the west was its emphasis upon the worth and possibilities of the common man, its belief in the right of every man to rise to the full measure of his own nature,

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[8] Ibid., 381-382.

[9] Ibid., 383-394. Cf. also C. and M. Beard, The Rise of American Civilization, I, 543-544.

[10] F. J. Turner, The Frontier in American History, chapter 1, et passim.

[11] Turner, Rise of the New West, p. 67.

under conditions of social mobility. Western democracy was no theorists's dream. It came, stark and strong and full of life, from the American forest.[12]

After the War of 1812 the west became the dominant factor in American politics. A new party came into power on the frontier. The majority of the people had first attained political control in the west, and the example of the western states, combined with agitation by the politically underprivileged in the east, had brought about a general extension of the suffrage.

> The creation of nine states beyond the mountains, accelerating the steady movement of political power toward the West, was synchronous with profound social changes on the seaboard -- changes equally disturbing to eastern gentlemen of the old school in wigs, ruffles, knee breeches, and silver buckles. While the widening agricultural area was sending an ever-increasing number of representatives to speak for farmers upon the floor of Congress, state after state on the Atlantic coast was putting ballots into the hands of laborers and mechanics whom the Fathers of the Republic had feared as Cicero feared the proletariat and desperate debtors of ancient Rome.[13]

These profound social and political changes soon resulted in a shift of political power to the west and the formation of a new popular party under the leadership of Andrew Jackson. In the election of 1824 the flimsy party unity of the Era of Good Feeling was shattered by the candidacy

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[12] Ibid., p. 69.

[13] Beard, The Rise of American Civilization, I, 542.

of four men for the presidency, two of whom, Clay and Jackson, were from the west. In this four way race Jackson had a plurality of electoral votes, but no candidate had a majority; so the election was thrown into the House of Representatives. It was only by the union of the Clay and Adams forces there that Adams was finally elected president. The election of 1824 indicates where political power rested at the time.

> ... when the nineteenth century turned its first quarter, political power was slipping from the hands of seaboard freeholders, capitalists, and planters into the grip of frontier farmers ... and into the hands of the working class of the industrial towns, already tinged with leveling doctrines from fermenting Europe.[14]

Jacksonian Democracy, then, the new force in American politics, was an amalgam of the agrarian and urban masses in a new party. It was fast democratizing America, fast introducing rule by the majority. Riding the crest of this irresistible democratic tide, Jackson was swept into the White House in the election of 1828 and became ouf first frontier president. The conservative minority, of course, had universally opposed the extension of the suffrage which had made possible this victory of the majority.[15] In the eastern states the conservative leaders,

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[14] Ibid., p. 545.

[15] A restricted suffrage was essential to the maintenance of their political control in the federal govern-

both eminent and obscure, rallied their forces at the constitutional conventions for a last stand before they were overwhelmed by the flood tide of democracy that was sweeping the country, before their anti-democratic doctrines were finally and unequivocally rejected and were no longer of any significance in American politics.[16]

II

At the Massachusetts convention, which met in Boston, November 15, 1820, the most celebrated delegates were John Adams, Daniel Webster, and Joseph Story, all conservatives. Webster was the principal conservative figure in the debate which developed on extension of the suffrage and other measures which involved the majority principle. Most of this debate occurred within a period of a

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ment as well as in the states. For electors of national representatives were the same as the "... Electors of the most numerous branch of the state Legislature." (The Constitution of the United States, Article I, section 2)

[16] In the Ohio Constitutional Convention of 1850-51, Townshend opposed excluding negroes from the polls on the grounds that it was anti-democratic, that it would make the government of Ohio aristocratic. J. M. Jacobson, op. cit., pp. 306-307. Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio, 1850-51, 2 vols., Columbus, 1851, II, 550-551.

few days and centered on two issues, the abolition of the property qualification of two hundred dollars for the electors of senators and the apportionment of senators according to population instead of taxes.[17]

The conservative debaters universally defended the existing property qualification and method of apportioning senators. They argued that property was essential to civilization, that the purpose of government was to protect property as well as personal rights, that property, therefore, should be given some representation in government. The existing provisions of the constitution, they held, not only granted property such a protective representation but also maintained a necessary balance in the legislative branch.[18] The conservative arguments were very similar to those used thirty years before by Adams in his political works. This similarity is made more striking by the speech which Adams himself made at the convention in support of the conservative cause, a speech which presented the essence

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[17] Journal of Debates and Proceedings in the Convention of Delegates, Chosen to Revise the Constitution of Massachusetts, Begun and holden at Boston, November 15, 1820, and continued by Adjournment to January 9, 1821. Boston, 1821, pp. 114, 122. Apportionment of representatives according to population was adopted without debate, Ibid., p. 127.

[18] See the speeches by Prescott (Journal of the Massachusetts Convention, p. 114), Dutton (Ibid., pp. 121-122), and Quincy (Ibid., p. 123). Many liberal delegates opposed

of his political theories. A "pecuniary qualification" was necessary both for the office of senator and for the electors of senators,[19] he held, because it was the purpose of government to protect property, without which there could be no civilization. Since human inequality made the distribution of property unequal, it was necessary to give the propertied class representation in one branch of the legislature, lest the propertyless majority use its political power to confiscate the property of the minority. In all lands and all ages, even in America, the propertyless rabble has outnumbered those who own property.[20] Failure to maintain a proper balance against this rabble brought about political chaos in ancient Greece and Rome and also in modern France, where at the time of the revolution, those with property were outnumbered fifty to one by those without. The French Revolution was an example "... of the utility and excellence of universal suffrage,"[21] for the

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the conservatives, of course. Reverend Joseph Richardson contended that "want of property in a free government, should be the last thing to prevent men from voting, unless the possession of property were shown to be necessarily connected with virtue." Ibid., p. 24. Samuel Dana called the property qualification "an aristocratic and anti-republican principle." Ibid.

[19] Ibid., p. 135.

[20] Ibid., p. 134.

[21] Ibid.

rule of numbers in France led to the execution of all the upper orders of society till the government finally got into the hands of peasants, jacobins, and sans-culottes. There was a bitter rivalry for the favor of the sans-culottes by Danton and Robespierre, who both finally lost their heads as a result of the power of the very majority which they had wooed. Then

> ... the colossal despotism of Napoleon sprung from the blood and ashes of Sans-culottism and desolated France and the rest of Europe. And thus it has happened in all ages and countries in the world, where such principles have been adopted ... . All writers agree, that there are twenty persons in Great Britain, who have no property, to one that has. -- If the radicals should succeed in obtaining universal suffrage, they will overturn the whole kingdom, and turn those who have property out of their houses.[22]

Joseph Story, agreeing with Adams on every point, asserted that population was not always the safest and best basis of representation. In a city such as Manchester in England those with property were outnumbered ten or twenty to one by those without. "Who would found a representation on such a population," he asked, "unless he intended all property should be a booty to be divided among plunderers?"[23]

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[22] Ibid., pp. 134-135.

[23] Ibid., p. 136.

Daniel Webster made the ablest speech in favor of representing property in the senate. He reasoned that if both houses were chosen in the same way by the same electors in the same districts, they would be impelled by the same motives and would represent the same interests. If this were the case they could not act as checks on each other, and the purpose of dividing the legislature into two parts would be defeated. Checks were needed in the legislative branch of government because, being closest to the people, it was the most powerful branch and also the most unstable, since the people themselves were subject to sudden shifts of opinion.

> Legislative bodies naturally feel strong, because they are numerous, and because they consider themselves as the immediate Representative of the people. They depend on public opinion to sustain their measures, and they undoubtedly possess great means of influencing public opinion. With all the guards which can be raised by constitutional provisions, we are not likely to be too well secured against cases of improper, or hasty, or intemperate legislation. ... If all Legislative power rested in one house, it is very problematical, whether any proper independence could be given, either to the Executive or the Judiciary.[24]

The independence of these branches would be impossible because under such conditions the legislature would be too sensitive to the shifting will of the majority of the

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[24] Ibid., p. 142, (misnumbered 242).

people. But Webster denied that the senate was to be a check on the people. It was rather a check on the house of representatives, an agent of government to which the people had given such large powers that they needed to create another agent, the senate, to act as a check on it. Such a senate was a protection of the people's rights, not a restraint on them.

> It limits the authority of agents, in making laws to bind their principals. And if it be wise to give one agent the power of checking or controlling another, it is equally wise, most manifestly, that there should be some difference of character, sentiment, feeling, or origin in that agent, who is to possess this control.[25]

This difference, Webster felt, should be provided in Massachusetts as it always had been, by apportioning senators to the various districts according to the quantity of taxes paid by each. This was perfectly just; inasmuch as the purpose of society was to protect property, the tenure of which was unequal among the members of society, it was necessary

> ... that the weight of each person, in the common councils, should bear a relation and proportion to his interest. Such is the sentiment of Grotius ... . Not, indeed, that every man's power should be in exact proportion to his property, but that, in a general sense, and in a general form, property, as such, should have its weight and influence, in political arrangement.[26]

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[25] Ibid.

[26] Ibid., 143 (misnumbered 243).

In justification of these dicta, Webster then launched into a lengthy eulogy of property as an essential factor in civilization. In the first place, he said, property is the source of all political power. As Harrington had shown in his Oceana, the form of government in any society is determined by the tenure of property in land. If the few possess the land, the constitution will be feudal; if the people possess it, the constitution will be "a Commonwealth," or republican. "To this sentiment," said Webster, "I entirely agree."[27] In the absence of military force, no other form of government than a republic could exist in a society where the land was divided into small freeholds. And if property were not so divided, the freest government could not long exist.

> In such a case, the popular power must break in upon the rights of property, or else the influence of property must limit and control the exercise of popular power.--Universal suffrage ... could not long exist in a community, where there was great inequality of property. The holders of estates would be obliged in such case, either, in some way, to restrain the right of suffrage; or else such right of suffrage would, ere long divide the property. In the nature of things, those who have not property, and see their neighbors possess much more than they think them to need, cannot be favorable to laws made for the protection of property. When this class becomes numerous, it grows clamorous. It looks on property as its prey and plunder, and is naturally ready, at all times, for violence and revolution.[28]

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[27] Ibid.

[28] Ibid. Webster delivered this speech at the convention on December 15, 1820. Seven days later in a speech delivered at Plymouth on "The First Settlement of New England," he repeated almost the exact words of his encomium on property. Cf. The Writings and Speeches of Daniel Webster, 18 vols., Boston, 1903, I, 214-215.

If property were this important in society, it behooved the convention to give it proper protection, so that just laws regulating its possession and transmission might be assured in the future.

Other reasons which Webster presented for giving property a voice in the government were that it paid five-sixths of the taxes in Massachusetts at that time, that it supported schools and maintained religious institutions, that it was at the very foundation of civilization. If property were this important to American institutions and if it looked to those who held it for protection, it was "entirely just that property should have its due weight and consideration in political arrangements."[29] This was necessary to insure property rights against a possible tyrannical majority.

> We have no experience that teaches us, that any other rights are safe, where property is not safe. Confiscation and plunder are generally in revolutionary commotions not far before banishment, imprisonment and death. ... Rome... is an example of the mischievous influence of the popular power, when disconnected with property ... . It is true, the arm of Caesar prostrated her liberty; but Caesar found his support within her very walls. Those who were profligate and necessitous, and factious and desperate, and capable, therefore, of being influenced by bribes and largesses ... outnumbered, and outvoted, in the tribes and centuries, the substantial,

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[29] Journal of the Massachusetts Convention, p. 144, (misnumbered 244).

sober, prudent and faithful citizens. Property was in the hands of one description of men, and power in those of another, and the balance of the constitution was destroyed.[30]

In spite of Webster's expressed faith that the people of America, who possessed its property, had no interest in overturning a government which protected property "by equal laws,"[31] he was in favor of retaining the old property qualification for the senate and of apportioning senators according to taxes. He considered the property qualification

> ... as giving property, generally, a representation in the Senate, both because it is just that it should have such representation, and because it is a convenient mode of providing that check, which the constitution of the legislature requires. I do not say that such a check might not be found in some other provision; but this is the provision already established, and it is ... a just and proper one.[32]

The result of this debate in the Massachusetts Convention was that the right of suffrage for all offices was extended to all male citizens over twenty-one who paid "... any state or county tax ... ."[33] But the old property qualification for the office of senator was re-

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[30] Ibid., p. 145, (misnumbered 245).

[31] Writings and Speeches, I, 215.

[32] Journal of Massachusetts Convention, p. 145, (misnumbered 245).

[33] Ibid., p. 277.

tained.[34] The method of apportioning representation in the house and senate was also left unchanged.[35]

III

Concern for the rights of property likewise motivated the conservatives in attacking the majority principle at the New York Convention in 1821. The Democratic Party, backed by the vast majority of the people of the state, had forced the calling of the convention in order to abolish certain undemocratic provisions of the state constitution, particularly those limiting the suffrage and giving the veto power to the Council of Revision.[36] A remnant of the old Federalist Party, composed of Chancellor James Kent, Chief Justice Ambrose Spencer, Jonas Platt, William Van Ness, Abraham Van Vechten, Stephen Van Rensselaer, and Elisha Williams, among others, opposed these reforms and pleaded the hopeless conservative cause of property representation in the senate.

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[34] McMaster, op. cit., V, 389-390.

[35] Ibid., p. 390.

[36] McMaster, op. cit., V, 384-385. Cf. also D. R. Fox, The Decline of Aristocracy in the Politics of New York, Studies in History Economics and Public Law, edited by the Faculty of Political Science of Columbia University, LXXXVI, No. 198, New York, 1919, pp. 233, 244-245.

There was little disagreement on the advisability of allowing all taxpaying males to vote for members of the assembly and for governor,[37] but the solid conservative phalanx, led by Chief Justice Spencer and Chancellor Kent, insisted that some property qualification for the electors of senators be retained.[38] This was the only branch of the government, the only way in which they had any hope of preserving even a trace of the spirit of the famous Federalist principle enunciated by John Jay, that "... they who own the country are the most fit persons to participate in the government of it ... ."[39]

Chief Justice Spencer of the New York Supreme Court announced the conservatives' proposal for implementing this principle when he moved that the old provision of the constitution be retained so that suffrage in the election of

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[37] McMaster, op. cit., V, 385. Cf. also the Reports of the Proceedings and Debates of the Convention of 1821, Assembled for the Purpose of Amending the Constitution of the State of New York, Albany, 1821, pp. 193-215.

[38] The proposal to broaden the suffrage by abolishing the property qualification for electors of senators was ably defended by Martin VanBuren, among others, New York Reports, pp. 255-265, 366.

[39] Letter to William Wilberforce, October 25, 1810, The Correspondence and Public Papers of John Jay, 4 vols., ed. H. P. Johnston, New York and London, 1890-93, IV, 336.

senators would be restricted to free male citizens having "... an interest in law or equity ... in any lands or tenements in this state, of the value of $250 over and above all debts charged thereon ... ."[40] In his long speech in defense of this motion, Spencer argued that it would preserve the existing distinction between the electors of senators and the electors of assemblymen.[41] Like Webster, Spencer considered such a provision desirable because it would protect both personal and property rights by preserving a balance in the legislature. Personal rights would be represented in the assembly, property rights in the senate.[42] An even more cogent reason for preserving the property qualification in the senate, Spencer felt, was that the inevitable increase of population in New York state and the probable ascendancy of manufacturing and finance would leave landed property unprotected. Like Gouverneur Morris and Madison, Spencer feared the extension of suffrage to the point that political power might ultimately rest in the hands of an urban proletariat. Rule

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[40] *New York Reports*, p. 215.

[41] *Ibid*.

[42] *Ibid*., p. 217. Spencer quoted both Hamilton and Jefferson in support of his argument that a balanced legislature, each branch of which was chosen by electors having distinct interests, added to "the security of the people." *Ibid*.

by such a proletarian majority would be the antithesis of true democracy, for it would throw the actual power into the hands of a few wealthy lords of industry and finance. "The man who feeds, clothes, and lodges another, has a real and absolute control over his will."[43]

Virtually the same arguments were repeated by Van Vechten, VanNess, and Williams, who supported Spencer in the debate.[44] Spencer received his strongest backing, however, from James Kent, the celebrated and respected Chancellor of New York State. Kent supported Spencer's amendment because he was anxious "that the senate should continue, as heretofore, the representative of the landed interest, and exempted from the control of universal suffrage."[45] Not to preserve some property qualification for the electors of Senators would be "... to annihilate, at one stroke, all ... property distinctions and to bow before the idol of universal suffrage."[46] Kent expressed the conventional Federalist fear of the effects of an unlimited franchise.

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[43] Ibid., p. 218.

[44] Ibid., pp. 226, 266, 252.

[45] Ibid., p. 219.

[46] Ibid., p. 220.

> That extreme democratic principle, when applied to the legislative and executive departments of government, has been regarded with terror, by the wise men of every age, because in every European republic, ancient and modern, in which it has been tried, it has terminated disastrously, and been productive of corruption, injustice, violence, and tyranny.[47]

But this could not occur if the landowners of New York were given a special representation so that they might stabilize the popular will.

> It is impossible that any people can lose their liberties by internal fraud or violence, so long as the country is parcelled out among free-holders of moderate possessions, and those freeholders have a sure and efficient control in the affairs of the government. Their habits, sympathies, and employments, necessarily inspire them with a correct spirit of freedom and justice; they are the safest guardians of property and the laws ... .[48]

The proposed property qualification, Kent urged, would give the landowners such a control in the affairs of government. And this would both protect their property from unjust taxation by the majority and guard against the future contingency which Spencer feared, the dominance of the urban masses, which would be controlled by a few moneyed barons as a result of universal suffrage.

> ... I wish to preserve our senate as the representative of the landed interest. I wish those who have an interest in the soil, to retain the exclusive possession

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[47] Ibid.

[48] Ibid.

of a branch in the legislature, as a strong hold in which they may find safety through all the vicissitudes which the state may be destined, in the course of Providence, to experience. I wish them to be always enabled to say that their freeholds cannot be taxed without their consent. The men of no property, together with the crowds of dependants connected with great manufacturing and commercial establishments, and the motley and undefinable population of crowded ports may, perhaps, at some future day, under skilmanagement, predominate in the assembly, and yet we should be perfectly safe if no laws could pass without the free consent of the owners of the soil.[49]

Continuing his exposition of the pernicious effects of universal suffrage, Kent painted an Adamsesque picture of society as a class struggle.

> There is a constant tendency in human society, and the history of every age proves it; there is a tendency in the poor to covet and to share the plunder of the rich; in the debtor to relax or avoid the obligation of contracts; in the majority to tyranize over the minority, and trample down their rights; in the indolent and the profligate, to cast the whole burthens of society upon the industrious and the virtuous; and <u>there is a tendency in ambitious and wicked men, to inflame these combustible materials</u>.[50]

But universal suffrage was not only dangerous; it was also unjust:

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[49] <u>Ibid</u>., pp. 220-221. Kent elaborated on this danger further on in the same speech: "We have already numerous and prosperous factories of one kind or another, and one master capitalist with his one hundred apprentices, and journeymen, and agents, and dependents, will bear down at the polls, an equal number of farmers or small estates in his vicinity, who cannot safely unite for their common defence. Large manufacturing and mechanical establishments, can act in an instant with the unity and efficacy of disciplined troops." <u>Ibid</u>., p. 222.

[50] <u>Ibid</u>., p. 221.

> The notion that every man that works a day on the road, or serves an idle hour in the militia, is entitled as of right to an equal participation in the whole power of the government, is most unreasonable, and has no foundation in justice. ... If such persons have an equal share in one branch of the legislature, it is surely as much as they can in justice or policy demand. Society is an association for the protection of property as well as of life, and the individual who contributes only one cent to the common stock, ought not to have the same power and influence in directing the property concerns of the partnership, as he who contributes his thousands. He will not have the same inducements to care, and diligence, and fidelity. His inducements and his temptation would be to divide the whole capital upon the principles of an agrarian law.[51]

It behooved the delegates, therefore, to take the long view, and, by preserving the property qualification for the electors of the senate, to protect the property rights of the virtuous minority from the encroachments of a tyrannical and vicious majority.

> The danger which we have hereafter to apprehend, is not the want, but the abuse, of liberty. We have to apprehend the oppression of minorities, and a disposition to encroach on private right -- to disturb chartered privileges -- and to weaken, degrade, and overawe the administration of justice; we have to apprehend the establishment of unequal, and consequently, unjust systems of taxation, and all the mischiefs of a crude and mutable legislation. A stable senate, exempted from the influence of universal suffrage, will powerfully check these dangerous propensities.[52]

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[51] Ibid.

[52] Ibid., p. 222.

Like other men of Federalist bent, Kent feared the instability of legal institutions and practice under the rule of an unchecked majority. Like them too, he showed concern in this futile debate for the protection of property rights above all others.[53]

This was the principal concern of his entire life. "An expert in devising legal springes to catch unwary democrats," he quietly occupied himself as Chancellor with "... the strategic work of placing the Constitution under the narrow custodianship of the English law,"[54] in order that the chief end of government, the protection of property rights,[55] might be achieved. An implacable hatred of democracy combined with a trust in the rule of the wise, the rich, and the good to form his political character. As a young associate justice of the New York Supreme Court, he had had numerous opportunities to observe the ways of democracy as he rode the circuit on the fron-

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[53]The new constitution extended the right to vote for all officers of the state to anyone who had "... paid a tax to the state or county, assessed upon his real or personal property ... ," to all members of the militia, and to all who served on the highways, except negroes, who had to possess a freehold valued at two hundred and fifty dollars or more to be admitted to the polls. New York Reports, p. 661.

[54]V. L. Parrington, Main Currents in American Thought, II, 197-198.

[55]Ibid., p. 198. Cf. also New York Reports, p. 221.

tier. The inhabitants of Delaware and Tioga counties, the most bumptiously democratic sections of his circuit, he especially detested. He called them "... rude, fierce people ... very democratic and licentious."[56] To Kent they "... proved the truth of the prophecies of degradation with which the Federalist seers had execrated the advent of Thomas Jefferson to power."[57]

These experiences as a judge on the frontier served to strengthen Kent's already formed conservative principles, which received their final and systematic expression in his monumental Commentaries on American Law. Presented first as a series of lectures at Columbia from 1824 to 1826, published in four volumes between 1826 and 1830, and then revised and republished five more times during the author's life, this work is not only a classic of jurisprudence; it is storehouse of Federalistic anti-democratic, anti-majority doctrine as well. The Commentaries reveal Kent's deep indebtedness to Hamilton and Adams, despite his general disapproval of Adams' writings, which he called "heresy in Amer-

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[56] J. T. Horton, James Kent, A Study in Conservatism, 1763-1847, New York and London, 1939, p. 127.

[57] Ibid. Speaking of a young lawyer at the assizes in Tioga, Kent said, "He was amiable in early life, but subsequently he degenerated into a Democrat and became a drunkard and licentious ... ." Ibid., p. 128.

ican politics."[58] Kent, of course, believed with the other Federalists that property was the great civilizing force,[59] that the "sense of property" was the law of man's nature;[60] consequently he deplored the rapid extension of the suffrage in America and approved of the Rhode Island Constitution of 1843, the last state constitution which retained a property qualification for suffrage.[61] For the same reason he praised

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[58] Although he praised Adams' exposition of the necessity of a balanced government of separated powers, he accused him of preaching aristocracy and monarchy, of declaring that virtue and ability are hereditary. William Kent, Memoirs and Letters of James Kent, L. L. D., Late Chancellor of the State of New York, Boston, 1898, pp. 90-93. "To inculcate the doctrine that men are not fit to choose their own rulers," said Kent. "that distinctions, not of virtue and talents, but of birth and fortune, are essential to the order of government; that riches and family should be the titles to preferment, and poverty the object of contempt, -- such doctrines I deem heresy in American politics." Ibid., pp. 96-97.

[59] Commentaries on American Law, ed. O. W. Holmes, Jr., (12th edition), 4 vols., Boston, 1873, Part V, Lecture xxxiv, II, 319.

[60] Ibid., p. 320.

[61] Commentaries, Part II, Lecture xi, I, 229-230. The failure of property qualifications and disproportionate representation, the very devices which Kent, Webster and the others were advocating, to insure good government and to prevent political corruption was effectively and undeniably exposed two generations later by Lincoln Steffens in a muckraking article. According to Steffens, sovereignty in Rhode Island was in the hands of farmers, "freeholders," in the eighteen-nineties. The foreign urban population was disfranchised. "The sovereignty of the State was lodged in

the checks and balances of the United States Constitution, provisions which had already "... essentially contributed to the protection of the rights of property."[62] The Senate of the United States provided a balance against the mercurial House of Representatives, which reflected the shifting will of the people.[63]

In Kent's opinion, another branch of the federal government equally effective in preventing the tyranny of the majority was the Federal Judiciary. Removed from control by the people or by the executive or legislative branches of the government, the judges could mete out justice impartially and thwart any invasion of individual rights by the majority.[64] The judges could protect minority rights even if the worst happened and the majority succeeded in forcing unjust laws through Congress, past the Senate and the veto power of the President. This was possible because of the function of the Supreme Court in

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the hands of the 'good old American stock in the country.' What happened? The good old American stock sold out. And their price was low." The buying and selling of votes was common then in Rhode Island. And that was the very excuse given for it. It was "an ancient custom of the country." The Autobiography of Lincoln Steffens, complete in one volume, New York, 1931, Part III, chapter 15, p. 467.

[62] Commentaries, Part V, Lecture xxxiv, II, 334.

[63] Commentaries, Part II, Lecture xi, I, 227-228.

[64] Commentaries, Part II, Lecture xiv, I, 294-295.

"expounding the Constitution," which guaranteed the rights of individuals. For by performing this duty the court protected "... every part of the government, and every member of the community, from undue and destructive innovations upon their chartered rights."[65] An admirer of John Marshall, Kent praised his argument in Marbury vs. Madison as "approaching to the precision and certainty of a mathematical demonstration."[66] After a paraphrase of Marshall's decision, Kent made a final comment on the incalculable importance of judicial review in America.

> This great question may be regarded as now finally settled, and I consider it to be one of the most interesting points in favor of constitutional liberty, and of the security of property in this country, that has ever been judicially determined.[67]

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[65] Commentaries, Part III, Lecture, xx, I, 450.

[66] Commentaries, Part III, Lecture xx, I, 453.

[67] Ibid., p. 454. The New York Herald Tribune took a similar view of the Supreme Court and Constitution in 1936. The re-election of Roosevelt, according to the editors, was a "rising vote of confidence" in a man who might interpret it as a mandate to lead wherever he thought best. However, they felt grateful that "two obstacles still interpose. They are the Constitution and the Supreme Court. These two safeguards of American freedom, these historic guardians alike of the national structure and of minority rights, held fast against the presidential will to power during the last four years." The New York Herald Tribune, Nov. 4, 1936. Quoted by Robert H. Jackson in The Struggle for Judicial Supremacy, a Study of a Crisis in American Power Politics, New York, 1941, p. 177, n.

In these dicta on the function of the judiciary as a moderator of the majority will, Kent merely repeated doctrines which he had enunciated over thirty years before in his introductory address as professor of law at Columbia College. In this lecture, delivered in 1794 nine years before Marbury vs. Madison,[68] Kent gave a complete exposition of the theory of judicial review as an essential part of our Constitution and foreshadowed Marshall's arguments. Like Marshall, Kent looked upon the Constitution as the basic law, beyond the power of the power of the people to modify by ordinary legislation; and like Marshall too he identified the people of 1787-1788 who ratified the Constitution with all subsequent generations and believed that the judges knew better what the basic law was than the people or their representatives. But he pointed out explicitly, as Marshall did not, the utility of judicial review in checking the excesses of the majority.

> ... in this country we have found it expedient to establish certain rights, to be deemed paramount to the power of the ordinary legislature, and this precaution is considered in general as essential to perfect security, and to guard against the occasional violence and momentary triumphs of party. Without some express provisions of this kind clearly settled in the original compact, and constantly protected by the firmness and moderation of the judicial department, the equal rights of a minor faction,

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[68] J. T. Horton, op. cit., pp. 87-93.

would perhaps very often be disregarded in the animated competitions for power, and fall a sacrifice to the passions of a fierce and vindictive majority.[69]

It seemed obvious to Kent that acts of legislation "... contrary to the true intent and meaning of the Constitution, ought to be absolutely null and void."[70] It seemed equally evident to him that only the judicial branch should decide when such acts were unconstitutional, for if the executive or legislative branches were allowed to interpret the constitution, they would be inclined to explain away all constitutional barriers. In support of his assertion that the judges should interpret the Constitution, Kent presented exactly the same arguments that Marshall was to use nine years later -- the supremacy and permanency of the Constitution as law and the necessity of judges choosing between contradictory laws.[71]

Kent made several more explicit criticisms of majority rule than those that appear in his speeches and legal writings, however. These criticisms all follow as the night the day from his pessimistic view of human nature and his resultant concept of government as a coercive instrument for controlling human vice:

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[69]"Kent's Introductory Lecture," Columbia Law Review, III (1903), 335.

[70]Ibid.

[71]Ibid., pp. 335-337.

> ... all plans of government which suppose the people will always act with wisdom and integrity are plainly Utopian, and contrary to uniform experience. Government must be framed for man as he is, and not for man as he would be if he were free from vice.[72]
>
> All theories of government that suppose the people virtuous, and able and willing to act virtuously, are plainly utopian, and will remain so until the Saturnian age.[73]

Since the majority was so vicious, Kent feared that it would disregard individual rights in order to achieve its end, or would even destroy these rights deliberately in order to do so.

> M. De Tocqueville is of opinion, that if the free institutions of America are to be destroyed, it will be owing to the tyranny of majorities, driving minorities to desperation. The majority constitutes public opinion, which becomes a tyrant, and controls freedom of discussion and independence of mind. This is his view of the question, and English writers on the institutions of society in this country have expressed the same opinion. If there was no check upon the tyranny of legislative majorities, the prospect before us would be gloomy in the extreme. But in addition to the indirect checks of the liberty of the press, and of popular instruction, and of manners, religion and local institutions, there are fundamental rights declared in the constitutions, and there are constitutional checks upon the arbitrary will of majorities confided to the integrity and independence of the judicial department. ... The most dangerous and tyrannical of all crafts is party or political craft. The equal rights of a minor party are disregarded in the animated competitions for power; and if it were not for the checks and barriers to which I have alluded, they would fall a sacrifice to the passions of fierce and vindictive majorities.[74]

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[72] Commentaries, Part II, Lecture xiv, I, 292-293.

[73] Memoirs and Letters, p. 207.

[74] Commentaries, Part III, Lecture xx, I, 450, n. Alexis de Tocqueville, who visited America in 1831, re-

The rule of such a majority was the gravest danger to be apprehended from democracy, the chief reason for Kent's intense hatred of that form of government. A marginal notation in one of his books reads: "The danger and the

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turned to France and wrote De la Démocratie en Amérique, published in 1835. A sharp criticism of American democracy, it was translated and published here and ran through three editions by 1839. According to de Tocqueville, the power of the majority was the cause of most of the evils in America. An individual injured by the majority in America could not appeal to public opinion, to the legislature, to the executive, or to a jury, for all represented the majority. Alexis de Tocqueville, Democracy in America, tr. H. Reeve, ed. J. C. Spencer (3rd American Edition, revised and corrected), New York, 1839, pp. 256-257. In America, said de Tocqueville, the power of the majority was used to deny freedom of the press to certain editors, to withhold suffrage from negroes, to increase arbitrary powers of such public officers as sheriffs. The majority frowned on independent thinking, on individual opinion, on criticism of its own acts. "In America, the majority raises very formidable barriers to the liberty of opinion; within these barriers an author may write whatever he pleases, but he will repent it if he ever step beyond them." Ibid., p. 260. The majority was responsible for a dead level of uniformity in America. "If great writers have not at present existed in America, the reason is very simply given in these facts; there can be no literary genius without freedom of opinion, and freedom of opinion does not exist in America." Ibid., p. 261.

One of the "English writers" on American Institutions referred to by Kent was Captain Marryat, C. B., whose Diary in America came out in 1839 in two parts. In commenting on rule by the majority in America, Marryat echoed and quoted de Tocqueville. A Diary in America with Remarks on its Political Institutions, Part Second, 3 vols., London, 1839, II, pp. 54-78. e.g., "To be popular with the majority in America, to be a favorite with the people, you must first divest yourself of all freedom of opinion ... ." Ibid., II, p. 69. "That the morals of the nation have retrograded from the total destruction of the aristocracy,

actual apprehensions in Democracies is the tyranny of majorities."[75] Kent called French democratic political thought a "... puerile panegyric on equality and the rights of man ... ."[76]

Of course Kent opposed and anathematized the popular party at all times, whether in 1795, 1821, or 1832. In 1795 he blamed the popular opposition to Jay's treaty with England on the clamor of demagogues. "We are happy if demagogues do not blind the public judgment and dupe the public passion about Mr. Jay's treaty, and throw us into confusion."[77] Jackson, leader of the new democratic hordes, he called "... a detestable, ignorant, reckless, vain and malignant tyrant."[78] He grudgingly admitted to Webster

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both in the government and in society, which has taken place within the last ten years, is most certain." Ibid., p. 70. "The tyranny of the majority has completely destroyed the moral courage of the American people, and without moral courage what chance is there of any fixed standard of morality?" Ibid., p. 72. "... an aristocracy is absolutely necessary for America, both politically and morally, if the Americans wish their institutions to hold together, for if some stop is not put to the rapidly advancing power of the people, anarchy must result." Ibid., p. 170.

[75] Memoirs and Letters of James Kent, p. 222.

[76] Ibid., p. 238.

[77] Ibid., p. 174.

[78] Horton, op. cit., p. 292.

that Jackson had a constitutional right to remove political opponents from office,[79] but added that Jackson, leader of the factious majority, undoubtedly abused this power.

> That the President grossly abuses the power of removal is manifest, but it is the evil genius of democracy to be the sport of factions. Hamilton said in the Federalist, in his speeches, and a hundred times to me, that factions would ruin us, and our Government had not sufficient energy and balance to resist the propensity to them, and to control their tyranny and their profligacy.[80]

Kent considered the election of 1832 a vital turning point in American history, an event after which America would either flourish under Liberty or sink under Despotism. But he had little hope of a national victory for the Whigs, even if by some miracle they should win in New York; so he wearily resigned himself to the destruction of all he cherished.

> The crisis is indeed portentous and frightful. We are threatened with destruction all around us, and we seem to be fast losing our original good sense and virtue. The democracy require all their candidates for Congress in this city to give another pledge to support all the measures of the administration. Can anything be more degrading and mostrous? Is the proud House of Representatives and the grand inquest of the nation to be composed of such materials?
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> We are in hopes of carrying the electoral ticket, in which I am included, but the struggle will be tre-

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[79] Memoirs, p. 206.

[80] Ibid., p. 207.

mendous. It will be the great battle of Armageddon between the Genius of Liberty, and the Spirits of Darkness; and suppose we should succeed, what then?[81]

The obstreperousness of the masses during the Jackson period was to Kent a symptom of the mortal disease that was afflicting the American body politic. When his son was requested by a committee of both parties to act as secretary of a meeting at Tammany Hall,

> ... the radical mob produced a row and broke up the meeting. There never was such misrule. Our Tory rich men are becoming startled and alarmed at our downhill course. My opinion is that the admission of universal suffrage and a licentious press are incompatible with government and security to property, and that the government and character of this country are going to ruin. This suffrage is too great an excitement for any political machine. It racks it to pieces, and morals go with it. It is probable England is going the same way. We are becoming selfish, profligate, crazy.[82]

This Federalist Jeremiah lamented the passing of Marshall, the retirement of Story, the appointment of Taney as Chief Justice of the Supreme Court. His worst fears were confirmed by Taney's opinion in the Charles River Bridge Case, which reversed Marshall's dictum that contracts were sacred and irrevocable. According to Taney the governing power could break a contract and destroy a vested right if the general welfare demanded it.

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[81] Ibid., p. 209.

[82] Ibid., p. 218.

But Kent did not approve of such reasonable liberalism. Kent criticized the decision as ignoring "the moral scruple of the community" and violating "the sanctity of contracts."

> If the legislature can quibble away or whittle away its contracts with impunity the people will be free to follow. Quicquid delirant reges plectuntur Achivi. I abhor the doctrine that the legislature is not bound by anything that is necessarily implied in a contract in order to give it effect and value, and by nothing that is not expressed in hoc verbo. Not one rule of interpretation is to be applied to their engagements and another rule to the contracts of individuals.[83]

Taney's opinion was but an encouragement to the majority to encroach on established individual rights, an example of the injustice inherent in democracy, the anticipated results of the appointment of a popular judge. "Now," Kent lamented,

> ... now we feel with a pang the loss of Marshall. Now we sadly realize that we are to be under the reign of little men -- a pigmy race and that the sages of the last age are extinguished.[84]

IV

The last important enunciation of Federalist doctrine was made in the convention which met in Richmond in

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[83]Horton, op. cit., p. 294.

[84]Ibid., p. 295.

1829 to revise the Virginia constitution. Here the majority principle was the center of a polemical tempest which arose out of two important issues facing the convention -- the extension of the suffrage and the reapportionment of representation between the eastern and western sections of the state. The quarrel in Virginia, unlike those in Massachusetts and New York, was not over apportionment of senators but of members of the lower house, the House of Delegates. Heavily weighted in favor of the east, the representation in the lower house had long been a grievance to the western counties of the state. Many eminent Virginians had criticised it. As early as 1710 Governor Spotswood had complained of the huge size of the new western counties, which were sometimes ninety miles long but which had a representation only equal to that of the smaller counties.[85] Jefferson pointed out in his Notes on Virginia in 1781 that

> ... nineteen thousand men, living below the falls of the rivers, possess half of the senate, and want four members only of possessing a majority of the house of delegates ... . nineteen thousand, therefore, living in one part of the country, give law to upwards of thirty thousand living in another, and appoint all their chief officers executive and judiciary.[86]

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[85] F. J. Turner, The Frontier in American History, p. 113.

[86] The Writings of Thomas Jefferson, ed. P. L. Ford, 10 vols., New York and London, 1893-1899, III, 223.

In spite of the growth of the new west and its liberalizing effect on other states, this inequality still existed in Virginia in 1829. At this time, when a constitutional convention was so vehemently demanded by the western counties, the eastern counties had twenty more delegates in the lower house as a result of counting three fifths of their slaves than they would have been entitled to on the basis of their white population alone. A reapportionment of delegates on the basis of white population would have required a surrender of power by the tidewater planters, who were unwilling to make such a sacrifice and used economic arguments to justify their refusal.[87]

The other reform involving the majority principle -- the extension of the suffrage to all taxpaying whites -- was

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[87]They argued that if they did surrender their control of the legislature, their already overtaxed property, their land and their slaves, would be even more heavily burdened to satisfy the appetite of the west for internal improvements, for the construction of roads, canals, and schools. B. W. Leigh stated that the east already "... paid $3.24 in taxes for every dollar paid by the west." C. H. Ambler, Sectionalism in Virginia from 1776 to 1861, Chicago, 1910, p. 141. And this was substantially true. Assessed on the basis of the inflated values of 1817, the tidewater section contributed taxes at an average rate of $8.43 an acre; whereas the piedmont contributed $8.20, the valley $7.33, and the trans-Alleghany section only 92¢ an acre. Furthermore, "slave property contributed almost one-third of the entire state revenue," and east of the Blue Ridge there were 397,000 slaves, west only 50,000. Ibid.

closely related to the first and was advocated by the same liberal elements from the west. For their principal argument in favor of reapportionment -- the natural equality of men in their political rights and the consequent right of the majority to rule -- had universal suffrage as its corollary.[88] Thus, even though suffrage was not a major issue in western Virginia because the cheapness of mountain land made the right to vote easy for anyone to acquire, the delegates from this section were forced by the logic of their own arguments to champion the cause of the disfranchised eastern tradesmen who did not own the twenty-five acres of improved land required for suffrage. The conservative delegates would not have allowed the reformers to dodge this issue anyway, even if they had so desired. Most of the conservatives pointed out that the majority principle implied universal suffrage, the granting of which they held to be absurd and dangerous. They tried to force the reformers into extremes on this question. In upholding the practice of the older state constitutions, which

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[88]Another criticism of the Virginia Constitution made by Jefferson in his Notes was that "the majority of the men in the state, who pay and fight for its support, are unrepresented in the legislature, the roll of freeholders entitled to vote, not including generally the half of those on the roll of the militia, or of the tax-gatherers." Writings, ed. Ford, III, 222.

did not list suffrage among the rights of man,[89] and in opposing the broadening of the franchise which the example of the new frontier states had virtually forced on such older states as New York and Massachusetts, the conservative delegates kept the majority principle in the foreground of the debate on this second issue which split the Virginia Convention.

Of these two mooted questions which prolonged the debates and nearly stalemated the convention, the basic one was the reapportionment of representation between the east and the west. Even though the question of universal suffrage was the first important one introduced to the convention,[90] much of the conservative criticism of it oc-

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[89] In all the original state constitutions "... it is noticeable that the right of suffrage is not included among the natural rights of men. Only in the backwoods community of Vermont was universal male suffrage established." B. F. Wright, Jr., American Interpretations of Natural Law, A Study in the History of Political Thought, Cambridge (Mass.), 1931, p. 119.

[90] On the eighth day of the convention "The Memorial of the Non-Freeholders of the City of Richmond" petitioning for the right of suffrage and using the majority principle as one argument in favor of the extension of the right, was read to the convention. Proceedings and Debates of the Virginia State Convention of 1829-30, Richmond, 1830, pp. 25-31.

curred in the course of the debate on reapportionment. The conservative speakers, directing the enfilade of their economic arguments at the majority principle, sought to dispose of both questions at once.

Because this close interrelationship existed between the two questions, because the profuse criticisms of the majority principle expressed during debate on the sectional question -- reapportionment -- were applicable also to the class question -- suffrage -- and were repeated by the conservatives in debating this question, criticisms arising from both these sources will be considered in this chapter, even though the purpose of this dissertation is to treat only criticisms arising from class conflict.

The conservative speeches, then, reveal a fear for the security of property under the rule of a propertyless majority and also an economic conflict between sections of the state. The convention was a struggle for political power inspired by economic motives, a struggle in which section vied with section and class with class.[91] This was the analysis of the debates given by Chapman Johnson after more than a month of weary, interminable, futile argument between the two opposed factions.

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[91]The struggle between sections of the state had some of the marks of the diagonal conflict between social classes in different sections of the country described on page 74 above.

> We are engaged, Mr. Chairman, in a contest for power -- disguise it as you will -- call it a discussion of the rights of man, natural or social -- call it an enquiry into political expediency -- imagine yourself, if you please, presiding over a school of philosophers, discoursing on the doctrines of political law, for the instruction of mankind, and the improvement of all human institutions, -- bring the question to the test of principle, or of practical utility -- still, Sir, all our metaphysical reasoning and our practical rules, all our scholastic learning and political wisdom, are but the arms employed in a contest, which involves the great and agitating question, whether the sceptre shall pass away from Judah, or a lawgiver from between her feet.[92]

In this struggle for power, the conservatives made good use of the existing inequality of taxation between sections in defending the inequality of representation which gave political dominance to the east. Assuming, like Adams, that the purpose of government was to protect property as well as personal rights, they attacked the

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[92] Virginia Debates, p. 257. Jefferson predicted such opposition to reform of the constitution in a letter to Samuel Kerchival in 1816. He favored revision of the constitution, for he considered it undemocratic for several reasons -- because of the apportionment of representation, the suffrage regulations, and the election of the governor by the legislature. In urging reform of the constitution, he advised, "Do not be frightened into ... surrender by the alarms of the timid, or the croakings of wealth against the ascendency of the people." The Writings of Thomas Jefferson, ed. H. A. Washington, VII, 11. Jefferson favored amendments to provide for the following reforms: "1. General suffrage. 2. Equal representation in the legislature. 3. An executive chosen by the people. 4. Judges elective or amovable. 5. Justices, jurors, and sheriffs elective ... ." Ibid., p. 13.

principal argument of the reformers, that majority rule was just and natural. If unlimited power were given to a western majority, they held, protection of eastern property would be impossible. For abuse of this power would inevitably result from natural human selfishness and the insatiable demand of the west for internal improvements.[93]

John Randolph insisted on the necessity of the combined ratio of black and white population for the protection of slave property, on the injustice of taxing property without the consent of the owner. Declaring that he subscribed "to every word of the Bill of Rights," Randolph nevertheless believed that it was a statement of "unmodified principles," which must necessarily be modified when put into operation.[94] The most important question to

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[93]Speech given by Scott, Virginia Debates, pp. 125-127. See also the speeches by Morris (Ibid., pp. 113-115) and Greene (Ibid., pp. 63-64).

[94]Ibid., pp. 317-318. The first three articles of the Virginia Bill of Rights of 1776 caused the conservatives considerable embarrassment, for they provided the liberals with strong arguments. They were

"1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

2. That all power is vested in, and consequently derived from the people; that magistrates are their trustees and servants, and at all times amenable to them.

be answered was to what extent they should operate. Limitations were always set to abstract principles, according to circumstances, according to what might be considered expedient for the commonwealth to be governed. Now property was essential to society, and slave property essential to society in Virginia. Therefore circumstances decreed that this property be represented in Virginia. For the very essence of justice in property matters, of the very right of property itself, said Randolph, was "that none shall tax it but the owner himself, or one who has a common feeling and interest with him."[95] He rejected the majority principle as a device for reaching political decisions. If there were not a negro in Virginia, he emphasized, he would still have opposed apportionment on the basis of population without regard for property.

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3. That government is, or ought to be, instituted for the common benefit, protection and security of the people ... ; of all the various modes and forms of government, that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration; and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right, to reform, alter or abolish it, in such a manner as shall be judged most conducive to the public weal." [Italics mine]. Virginia Debates, p. 895. The conservatives generally did as Randolph, protested their faith in the Bill of Rights but hedged by saying that it contained abstract principles of perfect government that had to be adapted to circumstances.

[94]Virginia Debates, p. 318.

> Because I will put it in the power of no man or set of men who ever lived, or who ever shall live, to tax me without my consent ... It is wholly immaterial whether this is done without my having any representation at all, or, as it was done in the case of the Tariff Law, by a phalanx stern and inexorable, who being the majority, and having the power, prescribe to me the law that I shall obey. Sir, what was it to all the Southern interest, that we came within two votes of defeating that iniquitous measure?[96]

The white ratio, which would introduce majority rule, was iniquitous because it divorced property from power.

> It is the first time in my life, that I ever heard of a Government which was to divorce property from power. ... the moment you have separated the two, that very moment property will go in search of power, and power in search of property.[97]

B. W. Leigh, one of the most eloquent of the younger conservatives, elaborated in Adamsesque terms on the dangerous consequences of separating property and power. All men are guided by self-interest,[98] he argued, and unless numbers and property are balanced against each other, a violent, ruthless struggle for power results which leads inevitably to military despotism.[99] This might be the result of adopting the white basis of representation, for such a

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[96] Ibid.

[97] Ibid., p. 319.

[98] Ibid., p. 167.

[99] Ibid., p. 156.

mode of assigning representation would disregard property and give the west a majority purely on the basis of numbers. Under such conditions ruinous taxation of the east by the west would result because of the passion of the west for internal improvements and because of the already unequal burdens of taxation borne by the two sections,[100] but especially because of the greater quantity of property of every kind which was held in the east.[101] The interest of the east and west were contrary in these ways; but they were even more contrary "... in regard to slaves considered as a subject of taxation... ."[102] Eastern Virginia consequently demanded the same security against an interested western majority that the south had demanded of the north in 1787.[103] Leigh therefore proposed that representation be distributed between the two sections according to a combined ratio of numbers and property, or, if the delegates preferred, according to the "federal number," which included three-fifths of the slaves.[104] Either of these methods

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[100] Ibid., p. 154.

[101] Ibid., p. 170.

[102] Ibid., p. 158.

[103] Ibid., p. 164.

[104] Ibid., p. 159.

would protect the eastern minority against the rapacity of the western majority. They would prevent a repetition in Virginia of the condition which existed in the federal government, where "... the Southern States in vain exclaim against its partial and oppressive operation -- in vain deprecate, remonstrate, struggle -- a bare majority hesitates not to impose the tariff."[105] Leigh and the other conservatives did not satisfactorily explain why rule by an interested minority would be any better than rule by an interested majority, or how a just political decision could be made short of complete unanimity -- an obvious impossibility. Nor did they recognize that the diversion of taxes to the western counties would produce the means of creating "property" in those areas.

In the course of his speech in rebuttal of the arguments of the western, liberal delegates who contended for majority rule, Leigh expressed his hatred of French democratic principles and his admiration of the English principles of republican liberty. He admired England as "... the inventor, the founder of that representative Government we so justly and so highly prize,"[106] a government capable of both insuring liberty and protecting property, without which liberty would be a meaningless sham.

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[105] Ibid., p. 164.

[106] Ibid., p. 157.

> Give me liberty in the English sense -- liberty founded on law, and protected by law -- no liberty held at the will of demagogue or tyrant ... no liberty for me to prey on others -- no liberty for others to prey on me. I want no French liberty -- none; a liberty which first attacked property, then the lives of its foes, then those of its friends; which prostrated all religion and morals ... .[107]

To conservatives in 1829, the French Revolution was still the symbol of all that was evil democracy, as it had been in the days of Adams and Fessenden.

Another eloquent and persuasive young conservative at the convention was Abel P. Upshur, later famous for his pro-slavery writings. He gave perhaps the most logically complete and closely knit conservative speech at the convention. Cutting to the very heart of the liberal argument at one stroke, Upshur showed that the reformers assumed the right of the majority to rule as a postulate without making any attempt at all to prove it.[108] He then proceeded with a theoretical analysis and demolition of this fundamental democratic principle. The alleged right of the majority to rule, he pointed out, must be founded either on some positive compact of government or on "some order of our nature, independent of all compact,

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[107] Ibid.

[108] Ibid., p. 66.

and consequently prior to all Government."[109] But this right was not derived from any form of American government,

> Not certainly from that Constitution of Government which we are now revising; for the chief purpose for which we have been brought together, is to correct a supposed defect in the Constitution, in this very particular.[110]

Therefore, Upshur reasoned, it must be founded on the law of nature or have no foundation at all. But a careful observation of the conditions of life in a state of nature easily demonstrates that the law of nature does not confer this right. Nature's inexorable rule is that every creature shall use its powers in the manner which will best promote its own happiness, that the most powerful shall rule. "Throughout her boundless domain, the law of force gives the only rule of right."[111]

Upshur then attacked one of the chief liberal theories of government, the theory of the social contract, the truth of which had been assumed by Rousseau, Paine, and Jefferson and had become a tradition in American thought. It is implicit both in the Declaration of Independence and the Virginia Bill of Rights. But it was nevertheless an

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[109] Ibid.

[110] Ibid.

[111] Ibid.

absurd argument for the naturalness of majority rule, Upshur maintained. Even if prior to the formation of society savage men had gathered together to form a government for the protection of individual rights, and even if they had agreed that majority rule was to be a fundamental principle of the new government, the right of the majority to govern the minority would not have been established. The agreement to submit to the majority would have had to be unanimous, a highly improbable occurrence. For in a state of nature, before a compact of government was formed, no man would be subject to any rule but his own will. If free, ungoverned men were meeting to form a compact, all possessing the original right to say whether they would submit to a government at all, whether they would be ruled by a majority, a minority, or a king, one man could refuse to submit to majority rule. And if he could refuse to submit then, before a government was formed, he could refuse at any time, even after a government was adopted. For after a contract is made, a man is not bound by it unless he has freely agreed to it. When, Upshur asked, does a man lose his natural right to resist majority rule? Like Randolph and Leigh, he demanded complete unanimity before political action could be taken, a principle that would lead even-

tually to a state of anarchy if carried to its logical conclusion.[112]

If the majority is to rule in a state of nature, if it is a natural law prior to all government, Upshur continued, how is the majority determined before the formation of government? Who would be the tellers, and who would appoint them? Within what limits would the majority act in a state of nature, the whole world or only part of it? If the whole world, then two million American Indians could prescribe the law to one million savages inhabiting the Asiatic islands. Furthermore, if nature gives the right to rule to the majority, is it a majority of mere numbers, or a majority including other elements? If it is a majority of mere numbers, then men, women, children, infants, paupers, all must be counted. Why exclude women from the polls, and children, and paupers? And why exclude even slaves? Whence does the majority derive its authority to rule, Upshur asked. If from physical power, as one liberal delegate had argued,[113] and if mere numbers are to rule, the majority principle

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[112] Upshur's opponents were not slow in pointing out these implications of his argument. Cf. Virginia Debates, p. 86.

[113] J. R. Cooke, of Frederick, in a long and able speech defended broadened suffrage and the white basis of

is patently absurd. For if numbers rule, women and children and old men must be counted, and they far outnumber the vigorous adult men of early and middle years. But they do not possess the greater physical force. Hence they would not rule. The minority, the mature, vigorous men, would rule. There was thus no proof to be derived from the theory of the social contract that the majority principle was a natural law.

But the concept of the social contract was not only self-contradictory, Upshur continued; it was also fictitious -- a myth, a figment of the brains of clever philosophers. All arguments depending on the hypothesis of a state of nature prior to history are fallacious. For such a state probably never existed, and if it did we can know nothing of it. The earliest records we have of man show him in a social state and thus imply that he is

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apportionment, using the Bill of Rights and the majority principle to good effect. He justified the majority principle thus: "To bring deliberation to some close, and election to some choice, it must of necessity be adopted as a rule, either that the majority or the minority must put an end to the deliberation, by pronouncing a decision: And the necessity of adopting the rule that the majority shall so pronounce, is founded on the necessity of a sanction to every law, on the fact that the majority possesses, in its superior physical force, that sanction, and on the certainty that it would not permanently submit to the opposite regulation." Ibid., p. 56.

naturally social. Upshur thought it probable that man "... was first urged into society, by a strong feeling of property implanted in his nature ... ."[114] This acquisitive instinct was the creator of society, even though property itself was the creature of society. Property, therefore, should be protected, for if there ever had been a social contract, the desire to own property was the principal factor in bringing it about.

But before drawing this logical inference from his statements, Upshur went on to demolish another concept basic to democracy and to the majority principle, the equality of men. It was patent, he said, that men are not equal. Nor are women equal to men. The only sense in which men are equal is that when they enter into society no man can claim the right to rule over another. For the same reason, ten men can not claim a natural right to rule over one. (Again Upshur demanded unanimity in political decisions.) Here again the majority principle contradicted one of its fundamental postulates. Basing itself on the natural equality of men, it yet denied this equality. For, according to the majority principle, the majority had the right to rule the minority. Therefore, even though the minority supposedly had the same

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[114] Ibid., p. 68.

rights as the majority, it actually had no rights at all because it was one less. Thus Upshur tried to reduce the central principle of the liberals to absurdity. He chose to interpret the majority principle to mean that the minority must submit not only in matters that concerned the general welfare, such as taxation, but also in spiritual matters. If the majority were to rule, the minority must give up its political rights, its intellectual liberty, according to Upshur's arguments. It would not even have the right of free speech and assembly by which it could sway the majority, or part of it, to its own side and could thus form a new majority. This is the logical inference from Upshur's assertion that under majority rule the minority would have no rights at all. It is obviously a distortion of democratic majority rule.

But the majority principle was not the only alleged basic principle of government that Upshur considered false. All political principles presented as having absolute, universal validity were equally fallacious. "In truth," he said,

> ... <u>there are no original principles of Government at all</u>. Novel and strange as the idea may appear, it nevertheless, strictly true, in the sense in which I announce it. There are no original principles, existing in the nature of things and independent of agreement, to which Government must of necessity conform, in order to

be either legitimate or philosophical. The principles of Government, are those principles only, which the people who form the Government choose to adopt and apply to themselves. Principles do not precede, but spring out of Government.[115]

This was a complete rejection of the American democratic faith of Upshur's day, of the faith in a higher moral law applicable to government which had inspired Jefferson to write the Declaration of Independence, the faith which was preached by Emerson, Cooper, and Orestes Brownson, among others.[116] If there were no fundamental principles of government, Upshur reasoned, the delegates were free to choose their own principles on the basis of expediency, to examine their conditions and interests and to construct a government accordingly.

But first, before forming such a government, it was necessary "... to ascertain what rule of representation, those interests suggest, as wise, just, and expedient."[117] This was fairly simple in Upshur's opinion, for "persons and property" were the constituents of society and the sole subjects of legislation. And of these two, property was by far the more important; it supported all social insti-

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[115] Ibid., p. 69.

[116] Ralph Henry Gabriel, The Course of American Democratic Thought, An Intellectual History Since 1815, New York, 1940, Chapter I, et passim.

[117] Virginia Debates, p. 70.

tutions and therefore was the subject of countless legal regulations, far outnumbering "persons" in the legislative attention it received.[118] The rule of representation, then, which seemed just to Upshur was one which would grant some protection to the peculiar type of property held in eastern Virginia, slavery. He consequently opposed the white basis of representation.[119] Majority rule would be fair, he admitted, if all men possessed some sort of property, for then the greater number would possess the greater interest. But all men in Virginia did not possess enough property so that they could be safely granted the vote. Hence it would be dangerous to give political control to a majority of numbers, as the white basis of apportionment would do. Upshur, like Hamilton, Gouverneur Morris, and the other Federalists, was not opposed to majority rule among property owners. He did not contend that in the legislature of an operating government the majority should not rule. That was not the question at all.

> The question before us, is prior to actual Government: it is not whether a majority shall rule in the Legislature, but of what elements that majority shall be composed.[120]

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[118] Ibid., pp. 70-71.

[119] Ibid., p. 75.

[120] Ibid., p. 70.

Since the interests of the several parts of the state were opposed, it followed that property was an important element which should be considered in composing the majority. But Upshur was careful to protect himself against the kind of ridicule of the social stake theory which Brackenridge used so effectively, the argument that if property were to be represented, land and horses should be allowed to vote.

> ... no man supposes that property should be represented eo nomine: it would be grossly absurd to place a bag of guineas upon your table, and call it a constituent entitled to representation. We do not propose to represent money, but the rights and interests which spring from the possession of money.[121]

Yet Upshur was proposing that chattel property in the form of slaves be represented in the state assembly.

In the course of this lengthy and heavy bombardment of the majority principle and its corollary, proportional representation according to white population, Upshur did not neglect its second corollary, universal suffrage. No one at the convention, not even the most zealous advocate of broadening the suffrage, would go to the length of supporting universal suffrage, of admitting paupers to the polls, he taunted.[122] No one would be "... so wild and

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[121] Ibid., p. 71.

[122] Ibid., p. 73.

visionary ... ." Yet the majority principle required it, for any limitation of suffrage was a departure from the majority principle.[123] Therefore a restriction adequate to the required end, the protection of property, was as admissible as any restriction. And the only restriction adequate to this end was a freehold qualification for suffrage.

The other conservative speakers supported Upshur on this question of extending the suffrage. Of these, Leigh was the most loquacious. The right of suffrage, he contended, was a conventional right, an expediency like the majority principle, not a natural right. The delegates, therefore, were free to make any rule governing suffrage which they thought expedient. Since it was the purpose of government to protect property as well as life and liberty, a freehold qualification for suffrage was necessary to protect property from the majority.[124] It was only just and logical that those who must bear the burden of taxation, not an irresponsible majority of the whole state, should have the power of laying taxes.[125] Leigh painted a vivid picture of the effects of universal suffrage in other states. The observation by any Virginian of the actual workings of

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[123] Ibid., p. 69.

[124] Ibid., p. 399.

[125] Ibid., p. 401.

this principle in such states as New York and Kentucky "... has rarely if ever failed to produce disgust, reprobation, deprecation."[126] Universal suffrage inevitably leads to the dominance of demagogic political leaders who cheat the people with a show of popular election.[127] It was a plague coming from the north, Leigh lamented. Like "... the influenza -- the small pox -- the varioloid -- the Hessian fly -- the Circuit Court system -- Universal Suffrage..." had moved into Virginia through the western counties and had finally become epidemic throughout the entire state.[128]

Such were the arguments of the conservative Virginians against the majority principle. There was little new in them, with the possible exception of Upshur's political nihilism, doctrine of expediency, and attack on the social contract theory. Nearly all of the conservative arguments, even those of Upshur, had been presented long before by the first generation of conservatives, by Hamilton, John Adams, and Fisher Ames. At the Virginia Convention the conservatives repeated Hamilton and Adams.

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[126] Ibid., p. 405.

[127] Ibid., p. 406.

[128] Ibid., p. 407.

They repeated each other. They repeated themselves. As summarized by Cooke, a liberal delegate, their arguments might have been written by John Adams.

> 1. That the security of property is one of the most essential elements of the prosperity and happiness of a community, and should be sedulously provided for by its institutions.
> 2. That men naturally love property, and the comforts and advantages it will purchase.
> 3. That this love of wealth is so strong, that the poor are the natural enemies of the rich, and feel a strong and habitual inclination to strip them of their wealth, or at least, to throw on them alone the burthens of society.
> 4. That the poor, being more numerous in every community than all the classes above them, would have the power, as well as the inclination thus to oppress the rich, if admitted to an equal participation with them in the political power; and
> 5. That it is therefore necessary to restrain, limit and diminish the power of this natural majority; of this many-headed and hungry monster, the many, by some artificial distribution of political power ... property will be invaded, all the multiplied evils of anarchy will ensue, till the society ... will be driven to prefer the ... Government of a single master.[129]

After weeks of futile, repetitious, tedious debate, after many plans for settling the dispute had been proposed,[130] after John Marshall and James Madison, the venerable patriarchs of the convention, had done their best to bring about a compromise,[131] the plan of W. F. Gordon was adop-

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[129] Ibid., p. 59.

[130] For a discussion of the various plans proposed, see Ambler, op. cit., pp. 163-167.

[131] Virginia Debates, pp. 561, 537-538.

ted.[132] By the adoption of this plan the east was allowed to retain its majority in the House of Delegates. Thus the conservatives gained the victory, for the basic issue between them and the liberals -- a fair apportionment of representation on the basis of white population -- was left unsettled. They were also successful in defeating the proposal to extend the suffrage to all whites over twenty-one. Even though the vote was granted to all leaseholders and housekeepers, "... the number of men of legal age, who remained excluded, amounted to more than thirty thousand."[133] The conservatives were able to block even the reformers' attempt to introduce popular election of the governor.[134] The Virginia Constitution as revised in 1830, then, was still far from democratic, and the propertied classes still exercised a considerable influence in the government, though not as strong an influence as they had in the past.

They had tried to do the same in New York and Massachusetts, with varying success. The arguments that their representatives used were the same in all three states. They were repetitions, variations, or elaborations of old

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[132] Ambler, op. cit., p. 168; Virginia Debates, p. 455.

[133] Ambler, op. cit., p. 168.

[134] Ibid.

themes in American politics, themes that had been played at the founding of the nation and replayed so often since that they had become completely stale. The standard conservative argument was becoming less convincing with every year that passed: property was fundamental to civilization, essential to individual happiness and should therefore be protected from a greedy and desperate majority whose rule would bring on property confiscation, anarchy, and finally despotism. This line of reasoning achieved a limited success in Massachusetts and Virginia, and none at all in New York. Whatever the method proposed in the state conventions for checking the majority -- whether by property qualifications for office or for suffrage, or by apportionment of representation in one or both houses of the legislature according to taxation -- the purpose was the same, the protection of minority property rights. The devices suggested for checking the majority were closely similar, if not identical, at the New York, Massachusetts, and Virginia conventions. So were the arguments and property concepts of their proponents. The insistence that the rights of property as well as of persons must be protected, the contention that suffrage was not a question of right but solely of expediency, the fear of a future urban pro-

letariat, the description of the majority of men as venal, lazy, and ignorant, all these long tried Federalist arguments, whether presented at Boston, Richmond, or Albany, arose from an identical concept of property rights, an ultra-individualistic, anti-social concept. Property, once acquired, was inviolable, was not to be touched without the owner's consent, no matter how many members of society might think it necessary for the general welfare. Vested rights were fixed. As long as one individual objected they could not be modified.

This is the implication of Kent's condemnation of Taney's decision in the Charles River Bridge Case. It is even more evident in the general fear expressed at all three conventions of taxation by the majority, in Randolph's refusal to be taxed by any body of men, however large, without his "consent," and in Upshur's dictum that ten men have no more right to rule one man against his will than one has a right to rule another. The demand for unanimity in regulating property rights, if not openly expressed, is at least implied in the arguments of every conservative who spoke of the "tyranny of the majority" at the state conventions. This demand reveals an anti-social view of property as a "natural" right preceding and divorced from society, not resulting from it, created by it, and there-

fore subject to social regulation when necessary, even against the will of the individual most concerned, the owner. The conservatives did not see or would not admit that circumstances can transform a right into an anti-social privilege, that if an individual vested interest conflicts with the general welfare it is not a right but a claim, that decisions have to be made short of unanimity somehow, that the minority, no matter how large or small, often has to be deprived of certain privileges by the majority.

Another Federalist belief common to all the conservatives at these state conventions was that property rights could be protected against a rapacious majority by a limited franchise and by representation according to taxation. They did not see that such flimsy safeguards would not stop a propertyless majority that outnumbered the freeholders fifty or one hundred to one if the day ever came when it wished to alter the distribution of wealth and when it was effectually organized to that end.

Economic interests and fear of an attempt to modify the <u>status quo</u> in property tenure, therefore, motivated the conservative debaters from 1820 to 1830, as they had in 1787 and 1788. Although property interests varied from

state to state, although slave property in Virginia raised a sectional problem there that did not vex the other states, a problem that aggravated the conservative fears and embittered the debate, the ramifications of the anti-majority arguments in the state constitutional conventions form a regular, uniform pattern -- the traditional Federalist pattern. In spite of the relative success of these arguments in Massachusetts and Virginia, a success which gave a false appearance of vitality to the Federalist cause and made it seem that Federalism had won another round, the debates in the state conventions were the dying gasp of Federalism. For after 1830 the Federalist social stake theory was rejected and universal suffrage and proportional representation were adopted everywhere in America. Entrenched wealth then had to resort to the Supreme Court and Constitution and to indirect, surreptitious means to control the majority.

CHAPTER VI

CRITICISM OF THE MAJORITY PRINCIPLE IN WHIG SATIRE

The conservative distrust of the majority so evident in these state constitutional conventions eventually received expression in literary form, but not before there was a complete realignment of party forces in American politics. The old Democratic party, the party of Jefferson, Madison, and Monroe, had been split into four factions in 1824, and John Quincy Adams, without even a plurality of electoral votes, was elected president only with the support of Clay in the House of Representatives. He did not fare so well in 1828, however, when he was decisively defeated by Andrew Jackson, the first unqualified "people's candidate" in our history. This was the first election in which the weight of the recently enfranchised masses was really felt, the first, for example, in which the people of New York state chose the presidential electors.[1] Adams did not receive a single electoral vote south of the Potomac and west of Pennsylvania.[2] This popular victory, this "political revolution,"[3] was made possible by astute polit-

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[1] J. B. McMaster, op. cit., V, 517.

[2] Ibid., p. 518.

[3] Ibid.

ical management, by the union of "mechanics and frontiersmen," of "coonskin" farmers and "city proletariat"[4] in a new political party. Retaining the old Jeffersonian title, "Democratic," and thus appealing to the people by its very name, this party had immense strength. Its leader was a popular idol; its roots spread far and deep into the firm and fertile soil of the frontier and urban masses. Class feeling in America was exploited to the utmost by the new party in its rise to power. Claiming to be the champions of the people, to represent the popular cause, the Jacksonians called the election of 1828 "... a movement of the people, a revolt of democracy against aristocracy."[5] Clever encouragement of existing class feeling, combined with the unpopularity of Adams and the popularity of Jackson, brought about the political revolution of 1828.

The natural reaction to these events soon occurred. A new political organization arose in opposition to the party of the majority. This group, calling itself the Whig party, was an anti-Jackson mosaic of incongruous materials put together after 1829. It had a motley array of leaders: Clay, a protectionist and advocate of internal improvements,

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[4] V. L. Parrington, Main Currents in American Thought, II, 146.

[5] McMaster, op. cit., V, 515.

Calhoun, a free-trader and states' rights extremist, the leader of the nullification forces in South Carolina, and an ardent champion of slavery, and Webster, a confirmed protectionist and unionist with a strong antipathy to slavery. Consequently the basic and sole unifying principle of the Whig party was negative -- an intense aversion for Jackson and all he stood for. The Whigs sought to thwart him in Congress, to oppose his policy in order to defeat him and his cohorts at the polls. Most of the old and young conservatives were Whigs; all of Jackson's enemies were. Most of the middle class belonged to the Whig party, their main principle and slogan being: business must go on.[6]

In 1832, with Clay at their head, they tried to oust the President by employing all the approved methods of politics, including propaganda and social terrorism.[7]

The Whigs answered the class antagonism whipped up by the Jacksonian Democrats with economic countermeasures and threats.

In an imposing phalanx, they marshalled most of the middle classes -- friends of the national bank, advocates of sound money, lawyers, merchants, manufacturers, business

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[6]D. R. Fox, op. cit., pp. 438, 409-439.

[7]Charles Beard, The Rise of American Civilization, I, 573.

men of the higher ranges, and college professors. Managers of the Bank subsidized the press by large payments for advertising. Mill owners threatened workmen with dismissal in case Jackson was elected. A packer in Cincinnati told the farmers that he would pay $2.50 a hundred for pork if Clay was victorious and a dollar less if his opponent, the Democratic President, was returned to power in Washington.[8]

The Whigs, then, were the new conservatives. "Federalism was dead and in its stead was the Whig party, patched together of odds and ends, devoid of principles, seeking only expediency... ."[9] It was no longer prudent to make a frontal assault on the majority principle, as the Federalists had done, in order to gain and hold political power. The people had the vote now, and the majority principle was triumphantly vindicated, at least in practical politics. Jackson and Van Buren were able to hold the political fort because of the support they received from the majority of the people. It was therefore necessary for the Whigs to make a flanking attack, to infiltrate and take the democratic stronghold from within by openly avowing democratic principles, by appealing to the majority principle while at the same time condemning abuses of it by the Democrats. It was not until the Whigs

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[8] Ibid.

[9] Parrington, Main Currents, II, 310.

outdid the Democrats in coining demagogic shibboleths, not until the disgraceful log cabin and hard cider campaign of 1840 that the Whigs won a national election. At about the same time Whig satirists were voicing a subtler criticism of the majority principle than that of the Federalists through an exposé of the abuses of the majority principle by Jackson, the hero of the majority, and by his party workers.

In treating this satire, the term "Democratic" will be used to indicate the party of Jackson, the term "democratic" to indicate the principles of government according to which sovereignty resides in the majority of the people. This is the same distinction that was maintained in the chapter on Brackenridge.

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Foremost among these Whig satirists was John Pendleton Kennedy. "Born and educated in Baltimore," the offspring of

> ... a Maryland father and a Virginia mother ... he was a son of the borderland, with strong ties of kinship and love that drew him to the Old Dominion, and even strong-

er ties of intellectual, social and financial interests that drew him towards Philadelphia and New York, Saratoga and Newport.[10]

These social and economic ties that turned Kennedy's sympathies to the north and made a Whig of him were the result of his second marriage. At thirty-four he married Elizabeth Gray, daughter of Edward Gray, a self-made capitalist who owned the Ellicott Mills not far from Baltimore. "Immediately upon being taken into the Gray family he adopted its ample scale of living, its genial hospitality, its social and political philosophy."[11] Kennedy soon became an ardent protectionist and a typical Whig manufacturer. And as a Whig manufacturer he ridiculed the banking schemes, demagogic cant, and party chicanery of the Jacksonian Democrats in his satirical novel, Quodlibet, in 1840.

Containing much explicit and implicit censure of majority rule as it was then practised in America, this work is a narrative illustration of Kennedy's political principles, which were not published in their entirety until after his death in 1870. Three volumes of Kennedy's

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[10] Parrington, op. cit., II, 46-47.

[11] Ibid., II, 48.

miscellaneous works, mostly essays and addresses, were published posthumously in 1872. Of these At Home and Abroad contains all of Kennedy's essays which develop political theories pertinent to his criticisms of majority rule in Quodlibet.

In discussing democracy in these essays Kennedy makes use of John Adams' old distinction between a simple or pure democracy and a representative democracy. Since the people of the United States do not meet and pass laws directly, and since the executive and the senators are not elected by the people, the government of the United States, says Kennedy, is not democratic in the narrowest sense of the term.[12] And yet it is truly democratic, for it is a representative government, responsible to the will of the people.

> Its birth was in the popular choice, its action is in the popular consent, its purpose is to express the popular wish, its strength is in the power of the people. This is democracy. And by whatever complication of machinery this POWER OF THE PEOPLE is brought to manifest itself, the social union will be democratic. The form of manifestation is nothing: the essence of the democratic principle is in the actual control and ascendancy of the popular opinion: that opinion moulds the democracy and gives it its character in spite of forms.[13]

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[12] "The People," At Home and Abroad, New York, 1872, pp. 154-155.

[13] "Demagogues," Ibid., p. 160.

Since good government requires intelligence, this popular will, the source of all power in a democratic government, is not to be determined by mere numbers, by counting noses, but by the collective intelligence or mind of the people. The democratic sovereign is

> ... the congregated intellect -- the reflecting, discriminating mind of a nation. ... Being an intelligence, it has no necessary connection with NUMERICAL MAJORITY, -- because the sentiment or will of a nation is not always, and by indispensable relation, known or attended by the numerical majority.[14]

The numerical majority does not always represent the will of the nation, Kennedy explains, because by the nature of things it cannot always express an original, undictated, intelligent opinion. To do this on any question two things are requisite -- knowledge and reflection, and few men have the one or can give the time for the other. Furthermore, a thousand devices are invented by the crafty to gull the ignorant. For all these reasons, so-called public opinion is frequently spurious, manufactured, totally lacking in originality. On the other hand, true, reliable, valuable public opinion is free, is founded on the consent of minds, on intelligent thought, not on the

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[14] Ibid., p. 161.

promptings of a few designing men. It is the collective reason of the body politic, not a mere aggregation of blind, unintelligent wills. Therefore,

> ... though it be essential to the nature of genuine democratic government that the public decree shall represent the sentiment, the wish and the command of the majority, yet such a majority must be the majority of minds in the nation:-- not the ostensible majority of men speaking other men's thoughts or obeying other men's orders. Government is a thinking process: -- laws are thoughts ... .[15]

History proves the principle that true public opinion is the social intelligence or common mind of a nation, not a majority of its members; for all democracies at all times have excluded certain persons -- women, minors, and foreigners, for example -- from participation in determining and expressing the common will. And yet they outnumber those who are granted a voice in the government. Thus Kennedy justifies his adoption of

> ... the theory of democracy which looks for majority of minds capable of weighing the business of the nation and inclined to take an interest in the welfare, not majority of persons; -- the import of narrowing this privilege to men of due age and to citizens, being to arrive, with what certainty it may admit of, at the thinking mind of the nation.[16]

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[15] Ibid., pp. 161-162.

[16] Ibid., p. 162.

The great danger to a democracy is that it will be subverted by sly demagogues who appeal to the ignorance and passions of the people in order to form a false majority of numbers and suppress the true majority, the majority of minds. Deceiving the people by shibboleths and "specious pretences,"

> The demagogues are perpetually striving to suppress the democratic principle by smothering it under an ostensible and counterfeit opinion, which, by their arts, they represent to be the opinion of the many. Their system is to create an oligarchy, of which they are the chiefs, and the multitude the subjects -- such oligarchy being the very antagonist to all free government.[17]

Such a false public opinion, fabricated by demagogues, results not only in an oligarchy but in tyranny of the worst sort, the tyranny of the majority, which is the complete antithesis of true democracy.

> ... all true men in a republic will from the bottom of their hearts contemn that common notion of democracy preached by the demagogues, as a vulgar and savage despotism. The sway of numbers impelled by passion, and mak-

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[17] Ibid., p. 163. Kennedy's fear and hatred of demagogues appears in his romance of early Maryland, Rob of the Bowl. In this tale Cocklescraft, the pirate, exhorts the Protestant faction to revolt against Lord Baltimore in a "... harangue which showed him qualified to take a rank amongst the demagogues of the time not inferior to that of the most successful masters of the art of agitation at the present day." Rob of the Bowl, New York, 1929, p. 262.

> ing their decree upon the prompting of a chief, or declaring their judgment on the instant, without thought, knowledge or deliberation, is the most arrogant and at the same time the most servile of all encroachments upon free government -- the rankest and most unsparing tyranny among all the tyrannies that have fed the malice of mankind.[18]

Like his Federalist predecessors, Kennedy feared the rule of demagogues and the tyranny of the majority, and he warned against both in the same terms used by the Federalists.

How do demagogues bring about this oligarchy and tyranny of the majority? According to Kennedy, chiefly by asserting the obvious truth that in a democracy the people

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[18] "Demagogues," At Home and Abroad, p. 163. In Horse-Shoe Robinson, his historical novel of Virginia and South Carolina during the Revolution, Kennedy comments on the tyranny of the majority in its censure of those who oppose public opinion. "There is no trial of courage which will bear comparison with that of a man whose own opinions stand in opposition, upon fearful question of passion, to those of the 'giddy-paced' and excited multitude, and who, nevertheless, carries them 'into act.' That man who can stand in the breach of universal public censure, with all the fashions of opinion disgracing him in the thoughts of the lookers on, with the tide of obloquy beating against his breast, and the fingers of the mighty, combined many, pointing him to scorn; nay, with the fury of the drunken rabble threatening him with instant death ... that man shall come forth from this fierce ordeal like tried gold; philosophy shall embalm his name in her richest unction, history shall give him a place on her brightest page, and old, yea, hoary, far off posterity shall remember him as of yesterday." Horse-Shoe Robinson, ed. E. E. Leisy, New York, 1937, pp. 128-129.

should rule, while at the same time they spread a false notion of who the people are, of what the term "the people" means, and thus divide the people into factions against each other. Unprincipled, demagogic politicians have managed to establish the idea that the people are not those who work honestly to acquire property, who pay taxes, who have the courage and intelligence to speak their own minds in opposition to the unscrupulous men who try to mislead them, but

> ... that the people of America are those who listen and obey, and that all who refuse to listen and obey are foreign from the people and have right neither to part nor lot in the control of public affairs.[19]

But the real people of America, Kennedy insists, are those who "refuse to listen and obey." There are two great divisions of men who compose society, "... the industrious or money-getting, and the idle."[20] The real people belong to the former class. The farmer, the merchant, the artisan, the laborer, all who save a bit of their earnings in order to rise to a better standard of living, who send their children to school, who pay taxes and fight for their country, these are the people.

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[19]"The People," At Home and Abroad, pp. 148-149.

[20]Ibid., p. 150.

> Such are all careful, sober men, who take delight in going to church, fearing God, and keeping his commandments. Such are all orderly persons who respect themselves, and set a value upon the laws.[21]

They are found in all walks of life. "We the people" of the Constitution includes "... him who walks in fine linen and him in hodden gray and clouted shoe -- all of whatsoever degree, or quality." In America "We have populus but no plebs."[22]

But professional politicians, demagogues, attempt to establish and spread the idea that we have. They organize a spurious "people," a false majority of numbers composed of the idlers, the antagonist class to the industrious. This group, which poses as the people contains

> ... the dissolute, the unthrifty, the idle, and the lovers of strong drink ... fraudulent debtors ... failures in business, the very ignorant, the profane, the blasphemer, the rioter and ruffian ... men who despise order and delight in havoc. And following these, comes a motley array, noisy and swaggering in their rags, blear-eyed and bloated, -- troops of vagabonds and thieves. There also mingles and consorts with this class, peddling politicians, reformers, radicals and crafty demagogues.[23]

Organized in political parties by designing politicians, this crowd of wastrels and parasites on society,

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[21] Ibid., pp. 150-151.

[22] Ibid., p. 149.

[23] Ibid., p. 151.

> ... this fickle, passion-led mass ... go about in the cities with greasy paper lanterns in the night, from tippling-shop to tippling-shop, hoarse with bawling their appointed rally words, and deaf with the beating of drums ... .[24]

However, the real people, the industrious working men, outnumber these puppets and would be able to master them if they would only unite. But instead they allow themselves to be misled by slogans, to be divided up into little fragments and to be set against each other, while at the same time some of the fragments of honest laboring men are combined with the idlers by the clever politicians to form a numerical majority without an intelligent opinion. In this way the owners of property are separated from each other and weakened, and "North and South, circumference and center opposed."[25] Demagogic politicians and their hirelings, the newspaper editors, raise the cry that they are striving for the people and against their enemies, and since they identify the people with the poor they raise a vicious and false class antagonism.

> Thus comes it that, fragment by fragment, the whole mass of the working men, are by turns read out of the magical circle of THE PEOPLE, and no man is allowed to retain a footing there who will not take his creed, his very

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[24] Ibid., p. 152.

[25] Ibid., p. 152.

phrase of loyalty, from this man of the stump, or still worse, that man of the type.[26]

This stirring up of discord between workmen and setting the poor against the rich is particularly villainous in America. For American laws are exactly as the people wish them to be and are subject to change at their will. Not only are all men in America on equal footing as to rights and duties, but nine hundred and ninety-nine out of every one thousand are makers of their own fortunes. Those who do not succeed "... are not worth a fig's end ..." and do not deserve to succeed. It is a blessing that here in America "... nearly every rich man has once been poor, and that every poor man may become rich ... ."[27] The great fallacy in this demagogic trick of separating rich and poor is that

> ... there is in this glorious country of ours, properly speaking, no rich and no poor classes. [sic] There are rich men and poor men, I grant, -- but they are not classes, because they do not last long enough to make a class. He who is rich to-day is poor tomorrow, and he who is poor to-day is rich to-morrow, so that this rich and poor is all one class, and that class is the WORKING MEN OF AMERICA.[28]

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[26] Ibid., p. 153.

[27] "The Brown Papers," At Home and Abroad, p. 235.

[28] Ibid., p. 236.

The boundless opportunity of America makes this alleged enmity between the rich and poor a demagogic fiction. Furthermore, the rich invest their money in commerce and industry, build bridges, factories, and ships, and thus give employment to the poor. They build up cities, states and nations. How can they be the enemies of the poor?[29]

A genuinely democratic government is constructed so as to avoid all of this false class antagonism, so as to evolve the genuine will of the majority -- the collective intelligence of the community. It "... cannot be founded on an apparent majority of opinions which by guile and falsehood of leaders, from ignorance, or from dissoluteness and debauchery, the greater number of men may be persuaded to call their own."[30] To prevent this very occurrence, the framers of the United States' Constitution designed a government which would preclude the influence of demagogues.

Their great purpose was to embody the power of the people in a form which should bring the protection of that power to the humblest citizen, with such visible efficacy as should assure him in the enjoyment of every right which belonged to his position in the state.[31]

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[29] Ibid., pp. 239-240.

[30] "Demagogues," At Home and Abroad, p. 162.

[31] Ibid., pp. 163-164.

These rights of the citizen in the order of their intrinsic value are, first, those of person, and second, those of property; in the order of their political value, they are, first those of property, and second those of person.

> ... for property being more coveted by an invader than either a citizen's liberty or his life, those rights of property ... engross the cares of legislation, -- there being a thousand laws on the statute books touching the protection of property, for one concerning life or liberty.[32]

This was stock conservative argument, expressed before by such contemporaries of Kennedy as Upshur and Webster.

The protection of these rights by governments is complicated by human inequality. Though we are all equal in our political rights, all equal before the law, we are unequal in our property rights,

> ... most unequal in social condition, in temperament, in circumstance, in wit and wisdom and worldly good. It has ever been the great problem how to graft this political equality upon this social inequality; and the only solution is written in that word subordination. Freedom only is where no man goes beyond the sphere of his allotted right, to encroach upon some other. This is subordination. In the order of society, in every man's amenability to the law, in the lawful use of our own, and careful abstaining from trespass on another, is liberty. Now, the law is made equal for all men ... and ... protects each man in those unequal social goods, which by no chance or contrivance may be made equal to all.[33]

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[32] Ibid., p. 164.

[33] "The People," At Home and Abroad, p. 150.

The founding fathers solved this problem of grafting "political equality upon ... social inequality," of protecting both personal and property rights by framing a democratic constitution, a basic law which guarantees every citizen the right to a voice in public affairs and

> ... secures to every man woman and child in the republic, the preservation of his rights against the invasion of the whole nation itself -- which ordains that no majority however great shall strip a citizen of his rights.[34]

Not only does the Constitution explicitly guarantee these rights of the individual against even a majority of the people; the form of government established by it contributes to that end also. For the government of the United States is not a simple democracy, in which the people meet directly and pass laws. Nor is it the kind of simple representative democracy in which a single legislative body, elected by every citizen and unchecked by any fundamental law or bill of rights, has the power to make all laws, "... to execute them, to sit in judgment on all rights of property and person and to punish all offences ... ."[35] Such was the government of Revolutionary France, but such a government is foreign to American ideas of freedom.

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[34]"Demagogues," At Home and Abroad, p. 164.

[35]"Congress," At Home and Abroad, p. 154.

> ... the only democratic feature in the Constitution of the United States is the House of Representatives. The authors of that constitution did not design to give the absolute democratic impress to any other part of the machine. The Executive is in nowise stamped with this impress -- for the chief comes through a college which was intended to stand between him and the people, and he is four years exampt from their control: the Senate, for a like reason, has not this impress: and still less is it stamped upon the judiciary which neither in origin, function, nor duration has any tincture of the democracy.[36]

The framers of the Constitution saw the efficacy of such a form of balanced government in protecting both the rights of persons and of property. The democratic house constitutes "... an impregnable citadel of liberty armed with sufficient weapons to defend and maintain free institutions forever."[36] Personal liberty is thus insured, since all have a voice in the government.

> In removing the other branches of power from the immediate sway of the popular impulses, they desired to provide for a steadfast, calm and impartial ministration of the laws.[37]

These checks and balances are an impenetrable shield for the property rights of the minority against the majority, for by them the people have limited the power of the agents of the majority. But in addition the people have limited

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[36] Ibid., p. 155.

[37] Ibid.

their own powers, have been "... jealous of power even to themselves."

> For wisely have they concluded that occasions may not be unfrequent when the aggregate body, like the individual man, may be passion-driven or fancy-charmed to abuse the power in their hands.[38]

Such were Kennedy's political principles. They were the traditional American conservative opinions, with perhaps one or two exceptions. The contradictory idea that the people, from whom are derived all the powers of government, can limit themselves in the exercise of their constituent power had appeared many times before in America, in Hamilton, Marshall, Kent, and Webster, for example. This idea is contradictory for two reasons: first, because if the people possess the power to form a government as they please and set certain bounds to the exercise of its powers, they can abolish the bounds whenever they wish, and second, because he who has the power to grant has also the power to deprive, and vice versa. If the people are the source of power, they cannot deprive themselves of power. This was the old fallacious argument -- used by Burke as well as Webster -- that one generation can legislate for eternity, can deprive all posterity of certain

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[38] Ibid.

powers. Traditional in American conservatism also were Kennedy's fear of majority rule and of demagogues, his disapproval of simple democracy and faith in checks and balances, his distinction between the rights of persons and of property, his identification of poverty with vice. Not new either was the belief in economic determinism and in the infinity of natural resources that is implicit in Kennedy's denial of the existence of economic classes and assertion that an industrious, deserving man inevitably succeeds. This was merely old Federalist doctrine preserved as the core of a new "middle-class individualism," an economic and political philosophy that was sweeping the country and "that inclined to the Whiggery of Henry Clay."[39]

What was new about this bourgeois gospel of progress and success as it was preached by Kennedy, what distinguished it sharply from Federalism was the denial of any natural class antagonism between rich and poor. The Federalists, from Hamilton to Kent had based their arguments against universal suffrage and in favor of property representation on the naturalness and inevitability of economic classes and of clashes between them. They said that demagogues played upon the natural envy which the poor

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[39]Parrington, op. cit., II, 138.

had for the rich, whom they outnumbered so heavily; whereas Kennedy blamed the creation of this antipathy of the poor against the rich -- an antipathy which he contended was artificial -- on unscrupulous politicians, on demagogues who create a false majority of numbers, an indoctrinated majority holding a prompted, second-hand opinion. But just how the true majority of minds which should rule is to be arrived at, Kennedy nowhere made clear. He did not advocate any property or educational qualification for suffrage. He only implied that the will of the true majority in a democracy must be determined by restrained and rational debate before an intelligent electorate guided by upright leaders, and that this will of the genuine majority is further developed and clarified through the instrument of a representative government of checks and balances, a government in which the various branches are removed varying degrees from the people, the source of all power. Kennedy's failure to complete his theory of the majority of minds demonstrates that he was primarily a business man, a Maryland gentleman mildly interested in literature, and only a dabbler in politics. His failure to develop this theory suggests that he might have hesitated to take the logical step and advocate restricted suffrage or some other means

of assuring government by the intelligent and virtuous. But if this step were not taken, why all the pother about majorities of opinion and majorities of intelligence? One might justly infer that Kennedy's statement that the true theory of democracy, which "... looks for a majority of minds capable of weighing the business of the nation ... ," has more significance than a mere defence of limiting the suffrage to adult male citizens. One may infer that this majority of capable minds was composed of the upper economic class. One may wonder if this inference is correct, but Kennedy gives no answer.

However, whether Kennedy completed his theory or not, he clearly illustrated what he meant by a numerical majority of opinion in Quodlibet, his satirical novel. To anyone who has read his essay on demagogues, this theory is obviously implicit in his satire of Jacksonian party politics.[40] Along with the artifices of the Jacksonian demagogues, the disastrous and shady practices of the "pet banks" of the party, and the arbitrariness of Jackson, himself, the rule by the false majority of opinion is one of the main objects of Kennedy's satire.

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[40] J. E. Uhler has pointed out the relation between Kennedy's posthumous works and Quodlibet in his article, "Kennedy's Novels and his Posthumous Works," American Literature, III (1932), 477.

The wiles of the demagogues and the rule by a false majority satirized in Quodlibet are really only different phases of the same subject, for the demagogues create the false majority, which they use for personal aggrandizement. Kennedy shows this by exposing their conduct in office, their electioneering tactics, and their management of the Bank of Quodlibet. The story opens at the time of the removal of the federal deposits from the United States Bank by Andrew Jackson.[41] Theodore Fog, a lawyer, and Nicodemus Handy, a lottery agent, both loyal Jackson

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[41]Believing in a simple government of limited powers and having an intense fear of debt, Jackson hated all banks and financiers. He called the United States Bank "a hydra of corruption," and resolved to strangle it. Parrington, op. cit., II, p. 149. Clay and Biddle, therefore, made a major mistake in strategy when they decided to make the renewal of the bank charter an issue in the election of 1832, though the charter had four years yet to run. Clay and the Whigs forced a renewal of the charter through Congress in 1832, but Jackson vetoed it declaring the bank unconstitutional. He made an economic, sectional issue of the bank in the campaign which followed and won. After his victory, he decided to kill the bank before its charter expired. So in order to starve it, he ordered the Secretary of the Treasury to deposit no more Federal Funds in the bank. Instead the funds were distributed among "pet banks" -- state banks with proper political affiliations. In 1836 the weakened U. S. Bank "... automatically came to the end of its checkered career." Charles Beard, op. cit., I, 570; 568-570. A period of "wild cat finance" and inordinate speculation followed, which was ended by the disastrous panic of 1837. This depression was hastened and aggravated by the removal of the deposits from the pet banks and by the issue of the specie circular, an order to public land officers to accept only gold and silver in payment for land purchases. Ibid., pp. 574-575.

men, immediately take advantage of the opportunity thus offered them. With the blessing of Middleton Flam, Democratic Representative of the district in Congress, they organize the Patriotic Copperplate Bank of Quodlibet. Flam is made president of the bank, Fog a director, and Handy Cashier. In anticipation of the deposit of federal treasury funds in the new bank, the directors issue bank notes, lend money to themselves, and start speculating in land and buildings. Under this wild cat banking the town of Quodlibet flourishes for a while, but eventually the entire inflated financial structure collapses and there is a severe depression. When this happens, Flam and Fog, under party orders, call the bank a Whig scheme and blame the depression on Whig merchants and financiers. At the end of the story, when Handy, cashier of the bank, absconds with $160,000, the Democratic paper in Quodlibet calls him a Whig.

This Protean ability at sudden and complete reversals of policy is the secret of "... the operation of the great principle of the New-Light Quodlibetarian theory ..." which it is Kennedy's "... main purpose ... to unfold ..." in his satire.[42]

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[42] QUODLIBET: Containing Some Annals Thereof, with an Authentic Account of the Origin and Growth of the Borough, and the Sayings and Doings of Sundry of the Towns-

These reversals of position allow the party leaders to shift with the political wind and be always on the side of the majority. Thus Kennedy's Latin name for his Democratic borough, "Quodlibet," meaning literally "what pleases," and for the Democratic Party in the borough, "Quodlibetarian" Democracy, is given significance. The majority and its leaders do whatever they desire, without regard to principle or consistency.

Such practices confuse Jesse Ferret, the honest, simple tavern keeper of Quodlibet. When his wife urges him to take sides in the political battles of Quodlibet, he objects that he does not know what sentiments to take up.

> If I knowed that, I should feel easy; but I never could keep any principles, upon account of the changes. Before a plain, simple man can clever tell where he is, everything has whisked away in the contrairy direction. One year we are "all tariff," and the next, "down with it as an abomination." Here we go "for canals and railroads!" -- a crack of the whip, and there we are all t'other side. "No electioneering of officers!" cries out the captain of the squad. "Turn that fellow out, he don't work for the party!" cries the very same captain in the very next breath.[43]

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people; interspersed with Speeches of the Most Remarkable and Distinguished Characters of that Place and its Vicinity. By Solomon Secondthoughts, Schoolmaster, from original Mss indited by him, and now made public at the request and under the patronage of the Great New-Light Democratic Central Committee of Quodlibet. Philadelphia, 1860, p. 169. (Quodlibet was first published in 1840.)

[43] Quodlibet, p. 159.

Mrs. Ferret replies that "sentiments," principles, don't matter.

> Don't Theodore Fog tell us the Democracy's a trying of experiments -- and, Lord bless us! ef they haint carried you on sides enough, then you are an unreasonable man. Principle isn't principle -- it's following of your party: -- you change when <u>it</u> changes, whereby you are always right.[44]

She urges him to join the new and at present dominant faction of the Democratic party, the True Grits, under Theodore Fog. But suppose the True Grits lose out, objects Ferret. He would then have offended the other members of the New Light Club, which meets at the tavern. "Well," replies Mrs. Ferret,

> ... and ef things does take a turn? ... is there any thing new in that, in this borough? Haint we had turns before? Theodore Fog will turn with 'em -- that's his principle, and it ought, by rights, to be yourn. Doesn't the schoolmaster tell you to stick to the upper side? Doesn't our member, Middleton Flam, tell you the same thing, and Nicodemus Handy, and Liphlet Fox? ... We're Dimmycrats, and always counts with the majority; and that's safe whichever way it goes; and, as I said before, no mortal man can find out a better side than that for a tavern-keeper.[45]

The importance of this central Quodlibetarian Democratic principle had been explained to her some time before by

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[44] <u>Ibid</u>., p. 160.

[45] <u>Ibid</u>., p. 161.

Solomon Secondthoughts, Secretary of the New Light Democratic Club of Quodlibet and author of the Annals of Quodlibet.

> Madam ... I would venture to remark, that it is very important to the ascendency of the New-Light Quodlibetarian Democratic party, that there should be no strife nor division in our ranks; and that, feeling the importance of this sentiment, it is one of our fundamental principles to go with the majority -- whenever it can be ascertained.[46]

Theodore Fog, one of the Democratic leaders in Quodlibet, when pressed to explain the conduct of his party toward the banks, uses the same argument. The New-Light Democracy never changes its central principle, though it may change its measures.

> We go, sir, for the will of the people -- that's the principle which lies at the bottom of all our actions. If the people are for a new measure, we frankly come out with them. Now ... the people are against the banks -- they are for the Independent Treasury: of course, then, you know where to find us.[47]

On another occasion Fog boasts that Jackson was for and against everything and that Van Buren promises to follow in his footsteps.

> We are all ... FOR and AGAINST everything! How else can we be with the majority? What is the New-Light Quodlibetarian Democracy, but a strict conformity to the will

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[46] Ibid., pp. 113-114.

[47] Ibid., p. 211.

of the majority? Against that and that only we never go! ... Perish Currency, Banks, Sub-Treasury, Constitution, Law, Benton, Amos, Van- I had almost said perish Old Hickory -- but <u>always</u> go with the MAJORITY![48]

Fog practises this principle. After the election of Harrison, he becomes a Whig. When this happens, at the end of the story, the following item appears in the party paper, <u>The Quodlibet Wholehog</u>:

> All Quodlibet is in a state of unparalleled disorder. It is reported that Theodore Fog has gone over to Harrison. Many True Grits have taken the same path.
> This is the second great Split of the Democratic party. The Hon. Middleton Flam says it cannot possibly stand a third.[49]

By such broad satirical irony Kennedy illustrates how a majority of opinion is formed. This jumping on the bandwagon with the majority, this opportunistic shifting of one's position with the belief that "principles ... is following your party," contributes to the formation in Quodlibet of a false majority of numbers, holding a second-handed opinion prompted by unscrupulous leaders. Every rank and file party member like Jesse Ferret, every minor leader like Theodore Fog who changes his opinions with the majority, contributes to the formation of an unintelli-

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[48] <u>Ibid</u>., p. 140.

[49] <u>Ibid</u>., p. 267.

gent, blind, tractable, dangerous numerical majority. Minor leaders like Fog shift their position in order to follow and join the majority for their own profit when they can no longer lead it.

Kennedy accuses the Democratic chiefs -- Jackson, Van Buren, and the others -- of pursuing a shifting, inconsistent policy for the same selfish reason -- personal aggrandizement. But the relation of the chiefs to the majority is different. By their chameleon policy they lead rather than follow it. For reasons best known to the princes of the Democratic party, they decide to force the Independent Treasury Bill through Congress, even though it has been rejected once already. Since bank bribes are supposed to have defeated the bill, the orders are to attack the banks, even though the party has recently subsidized them with deposits of federal funds. In support of this policy, "Every New Light is expected to toe the mark." At a meeting in Quodlibet Fog outlines the strategy which the Democrats will follow -- deception by the usual demagogic shibboleths. They will completely reverse their course and blame the Whigs for all the evils of wildcat banking which they themselves have brought about. "Down with paper money! will be the word. Turn the tables on the Whigs, and call the whole bank system the spawn of

aristocracy ... ."[50] But the party members need not be afraid, Fog hastens to add; no harm will be done to any bank which they have an interest in. "... the essence of the thing is in the noise."[51] At about the same time Congressman Flam receives a letter from Washington which outlines the same strategy. The Whigs are to be blamed for the multiplication of the state banks, for which the Democratic party is known to be solely responsible. It is necessary, reads the letter to Flam, that an unusually loud clamor be made and that it be

> ... followed up with unremitting industry, that, by force of the word and incessant repetition, we may get the people to believe that we have had nothing to do with the creation of these corporations ... ."[52]

Shortly after this, when the Copperplate Bank of Quodlibet has closed its doors, Fog meets Michael Grant, a Whig, who taunts him with the remark that the Democrats have brought their pigs to market in the depression they are suffering. "Our pigs!" Fog snorts,

> The whole litter comes from a Whig mother: it is the spawn of ... aristocracy ... . The Whigs, sir, are

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[50] Ibid., p. 191.

[51] Ibid.

[52] Ibid., p. 194.

men of property; the Democrats are poor, sir. Banks are not made by poor men, Mr. Grant; there's the logic of the case.[53]

With such effrontery are the orders from the Democratic bosses carried out by Fog and Flam.

The ease with which they accomplish this and hoodwink the people reveals just what the "sovereign people" are -- pawns, sheep, puppets, gulls. In a passage heavy with irony, Kennedy remarks that the term "freemen" is peculiarly appropriate as it is applied to assemblies of the people, for ever since the people have given up their freedom to demagogic leaders and been told how to think, speak, vote, and walk,

> ... it is extremely proper, in order to avoid odious imputations which malevolent observers might cast upon them, on all occasions to employ the phrase I have alluded to; since, if this were neglected, these malevolent observers might take it into their heads to call the people of our free Republic Tools, Instruments, Rank-and-File, and other names significant of a state of subserviency, which in the eyes of strangers might cast discredit on our free institutions ... .[54]

Thus Kennedy unmistakably implies that rule by an ignorant numerical majority, taking orders from unprincipled leaders, destroys freedom. He points to the same pernicious

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[53] Ibid., pp. 205-206.

[54] Ibid., pp. 128-129.

effects of rule by the people that B. W. Leigh pointed to in his speech on universal suffrage at the Virginia Convention -- the organization of the people into closely knit and strictly disciplined political parties and the resultant placing of the actual political power in the hands of a few unscrupulous leaders.

These leaders who drill the battalions of the people are demagogues, according to Kennedy; and there is a whole hierarchy of them, from Old Hickory on down to the lowest and pettiest local party leader like Theodore Fog. Unlike Brackenridge and Fessenden, who merely adumbrate the American demagogue, Kennedy gives a full length portrait of two -- Theodore Fog, a man of the people, elected to a minor office because of his success in temporarily catching the popular fancy, and Middleton Flam, a man of some wealth and a snob at heart, who flatters the people and thus retains his seat in Congress. Flam is intermediate in the scale of demagogues between Fog at the bottom, next to the people, and Jackson at the top, the autocrat, the iron-willed ruler of the party.

Theodore Fog, "... an old practitioner at more than one bar ... ,"[55] is a third rate lawyer and first rate drunkard. He is also drunk with words most of the time,

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[55] Ibid., p. 148.

calling freedom of opinion and freedom of discussion "... chartered libertines that float upon the ambient air consecrated to the Genius of Universal Emancipation ... ."[56] Like all demagogues, Fog is guilty of spreading the false definition of the people which Kennedy condemns in At Home and Abroad, the definition which identifies the people with the poorest class. In a rabble-rousing speech given at a political assembly, Fog insists that there is a natural hostility between the rich and the poor, that since the New Light party is the party of the poor and since it is the right of the poor to legislate away the rich man's possessions, the rich should not be allowed any influence in any department of government. "Do we not know," asks Fog,

> that in every community the majority are poor? that there are two men without property for every one with it? Of course, then, it follows logically, that, as two heads are better than one, the sole right, as well as the sole power of legislation is in the poor, and that they may make laws for the government of the rich; but the rich cannot make laws for the government of the poor. Besides who would be the most impartial in such a matter, the man legislating for his own property, or the man legislating for his neighbor's? This requires no reply.[57]

In his speech, then, Fog incites the people to do the very thing that all of the Federalists feared they would

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[56] Ibid., p. 189.

[57] Ibid., p. 141.

do -- unite in a rapacious and tyrannical majority and plunder the solid citizens of their property. This was the nightmare that haunted Hamilton, Adams, Kent, and all the other Federalists. Using broad satiric irony, Kennedy ridicules every idea expressed by Fog, but any Federalist might have made two of Fog's statements, that there is a conflict between the rich and the poor and that the propertyless rabble outnumbers the property holders two to one. On these two points Kennedy sharply disagreed with both the Federalists and Fog. In At Home and Abroad, he not only denies the animosity between the rich and the poor but even the real existence of any such classes in America, with its boundless opportunities. And he asserts that the industrious, honest men who own some property, no matter how little, actually outnumber the shiftless rabble who listen to demagogues like Fog. But they allow themselves to be separated from each other into small groups and one by one read out of that mystical social group called "The People." Thus, according to Kennedy, demagogues, not natural law, are responsible for antagonism between so-called economic classes.

However, Kennedy and the Federalists agreed in condemning Fog's idea that two heads are better than one and

that the majority therefore has a right to legislate for the minority. They were also in agreement on the answer to Fog's question about the impartiality of a man legislating for his own and his neighbor's property. The same question had been posed at the Virginia Convention with quite the opposite implication from that which Fog gives it. As Fog asks it, he and the True Grits give one answer, but Kennedy and the reader give another. By giving this important contemporary moot question such a clever twist, Kennedy achieved a brilliant stroke of satiric irony.

In this speech by Fog, Kennedy satirizes Jacksonian Democracy and makes the same charges against the party that the Federalists made against the party of Jefferson. He accuses the Jacksonians of levelling, of demagoguery, opportunism, tyranny. Implying that they are guilty of distorting democracy, he puts distortions of democratic doctrine in Fog's mouth. He has Fog state the most inflammatory, dangerous principles possible -- principles which no sane, honest politician would entertain for an instant and which no scamp would dare openly express. By this means Kennedy presents the Democrats as brazen scalawags, totally devoid of moral standards.

Other characteristics of Jacksonian Democracy satirized by Kennedy in Fog's speech are its greed for votes

and its playing upon the passions of the multitude. Fog makes a bid for the votes of the workmen from a nearby railroad, saying that he disapproves of all laws requiring a certain period of residence of a man before he is allowed to vote. But he

> ... never can consent to extend the invaluable privilege of suffrage to an unworthy man. He must be a New Light, an ardent, unblenching Quodlibetarian Democrat, ready to go in whatever way we who take the trouble to do his thinking for him, require ... .[58]

Such is the Democratic concept of free speech and universal suffrage, according to Kennedy. He uses irony to illustrate the other Democratic vice which Fog typifies, the appeal to popular prejudice and passion. Fog scorns such stratagems. He does not enchant the crowd with a dazzling oration. He appeals only to the reason.

> I address myself solely and severely, sternly, without a flower, prosaically, without a figure, soberly, without a flight, to your cool, temperate, and unseduced capacity of logical deduction. ... I, a poor man, do battle against the hosts of the rich. I, the friend of honest labor, struggle against the huge monopoly of hoarded wealth, hoarded by grinding the faces of our sterling but destitute laboring men ... .[59]

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[58] Ibid., pp. 142-143.

[59] Ibid., p. 144.

In his very denial, Fog convicts himself of demagoguery by his use of passion-loaded, provocative epithets and slogans.

In an incident which occurs soon after the meeting at which Fog gives his address, Kennedy comments on Fog's demagogic stirring up of the poor against the rich. A small group gathers at the blacksmith shop of Abel Brawn, a sturdy, honest, and intelligent Whig. He argues with the Democrats in almost the very words that Kennedy uses in his essay on Demagogues.

> Who are the rich that they talk about? Why, it is every man who has sense enough to know that they are imposing on him, whether he be worth a million or worth only five hundred dollars -- unless indeed it be one of their own rich men, and then they can't praise him too much. Is industry a sin in this land, that when it has earned a little something for a wet day, the man who has thriven by it must be held up as an enemy to his country? Does it hurt a man's patriotism, when he sends his children to school, and works until he can buy a tract of land to start them well in life. ... Is it to be told against a man, that his neighbors count him to be frugal and thrifty, and that he is considered respectable in the world? Yet that is your new fashioned Democracy, which wants to put every one in the dust who doesn't idle away his time and squander his substance, and let his family go to rack, whilst he strolls about the country bawling Democracy.[60]

According to Kennedy, anyone who sets the poor against the rich in America is a villain. Anyone who listens to him is a dupe.

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[60] Ibid., pp. 186-187.

The other principal demagogue satirized by Kennedy in Quodlibet, Congressman Middleton Flam, belongs to a higher economic and political level and is more intelligent than Fog, but he uses essentially the same devices -- flattery and deceit -- in catching the fancy of the majority. Although he poses as a friend of the people, he is actually an aristocrat at heart. The son of an old line Federalist, Judge Flam, he takes his father's advice and follows Jackson for what it will bring him, not because he loves the people. Old Judge Flam saw the opportunity which Jackson provided the disgruntled Federalists. "Middleton, my son," he said with great emphasis and gravity,

> ... if ever you get into a majority, stick to it. Bring up your children to it. You have a long account to settle: I shall bequeath to you the Vengeance of the Federal party. We must rally at once upon Andrew Jackson. He will bring us what it is fashionable to call "the people." We shall bring him the talent, the intelligence, and the patriotism of the land.[61]

Middleton heeded his father and lent such lusty support to Jackson that he was elected to the House of Representatives. Flam is a typical Democrat, according to Kennedy. A Federalist at heart, he has sold his soul to King Andrew for an office and in order to keep it masquerades as a friend of the people. He repeats frequently that though his

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[61] Ibid., pp. 48-49.

father was of Washington's school of politics, he himself has never approved of that great man's political theories. But this is a lie. Flam has no more love for the people than Washington or Hamilton had. He disapproves of the public schools, the cradle of democracy, at least for his own daughters. "A refinement of sensibility in Mr. Flam, which I might almost denominate fastidious ..."[62] forces him to have them educated under his own roof by a French tutor, lest "... they ... form intimacies unbecoming the station ..."[63] in life to which they were born. Flam talks one set of principles before the people -- equal rights, the dignity and worth of the common man, etc. -- and lives according to another in his private life. He is a snob as well as a demagogue.

His demagoguery is also evident in the changes he makes in the names of the family estate and house. In Judge Flam's day they were called Poplar Flats and Quality Hall, but these names undergo a metamorphosis along with the political principles of the family. Flam changes them to Popular Flats and Equality Hall, explaining that he does this

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[62] Ibid., p. 45.

[63] Ibid., p. 46.

> Because ... in the Quodlibetarian Democratic system ... words are things. Not only things ... but important and valuable things. I have observed ... in our country, especially among the unflinching, uncompromising Democrats, that a name is always half the battle. For instance, sir, we wish to destroy the bank; we have only to call it a Monster: we desire to put down an opposition ticket, and keep the offices among ourselves; all that we have to do is to set up a cry of Aristocracy. ... Depend upon it ... with the true Quodlibetarian Democracy, names are things: that is the grand secret of the "New-Light system."[64]

Flam is also a bluffer and show-off. Loving ostentatious display, he has contrived to give Equality Hall an air of fraudulent grandeur. By building a false Grecian front on his one story brick house, he makes it look like a classical mansion, much larger and finer than it really is. When this false front is criticised as a mere theatrical show, Flam replies that certainly it is a show. It was deliberately designed to be a show and to face the road.

> When I built that portico, I wished the people, sir, to see it; the best I have shall always be shown to the people. I trust, sir, that my respect for the people shall never so far abate, as to induce me to neglect <u>them</u>. My house ... is that of an humble citizen; there are a dozen equal to it in this county; but that part of it which is intended to gratify the people is unsurpassed here or anywhere else. On the same principle ... when I appear in public, I dress in the most expensive attire, I drive the best horses, and procure the finest coach.[65]

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[64] <u>Ibid</u>., pp. 58-59.

[65] <u>Ibid</u>., p. 61.

Flam turns even his ostentation, his vulgar attempt to be what he is not, to good political effect.

Flam's philanthropy and democracy are demonstrated, says Kennedy, by his generous policy in lending money to needy and deserving people, a policy which keeps him constantly short of cash. Of course he is always careful to protect himself by a mortgage on the borrower's property. But this is only just, since he lends money on the democratic principles of freedom and equality. "Why should the poor man pay six per cent when money is worth but five?" reasons Flam.

> Why should he be prevented paying seven, eight, or nine, even, if he finds it his interest to give it -- or cannot do without it? No, sir, Equal Rights, Liberty of Conscience, and Unrestricted Freedom of Contract -- there is the buttress of Democratic government![66]

As a result of this generous fiscal policy, Flam has acquired a great deal of farm land and is a man of considerable wealth. But he will make no permanent improvements on his property at Popular Flats. He invests all of his money in the Chickasaw Land Reserve, from which he expects to realize a fortune.

Flam puts all of his demagogic arts to work when he pacifies a crowd that has collected to start a run on the

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[66] Ibid., pp. 64-65.

Copperplate Bank of Quodlibet. Using words as things, "real things," Flam proceeds to blame the Whigs for the financial disasters brought on by Jackson's policies.

> ... while we have been fighting against this PAPER-MONEY PARTY, and have devoted all our energies to the endeavor to prostrate the influence of these RAG BARONS, these MONOPOLISTS, these CHAMPIONS OF VESTED RIGHTS AND CHARTERED PRIVILEGES, the WHIGS -- we have been foiled at every turn by the power of their unholy combinations of associated wealth. They have filled your land with banks, and have brought upon us all the curses of over-trading and over-speculating, until the people are literally on their faces at the footstool of the Money Power. (Tremendous cheering). ... Between the rich and the poor lies a mighty gulf. The rich man <u>has</u>, the poor man <u>wants</u>. Of that which the rich hath, does he give to the poor? (Loud No).[67]

The Copperplate Bank of Quodlibet is an exception to all other banks; it is purely "DEMOCRATIC," "the poor man's friend." As president of this Democratic Bank, Flam should be trusted to look out for the interests of the people.

> Born with an instinctive love of the people, I should be the vilest of men, if I could ever forget my duty to them. (Immense cheering, and cries of "Flam forever!"). Take my advice, retire to your homes, keep an eye on the Whigs and their wicked schemes to bolster up the State banks, make no run on this institution -- it is an ill bird that defiles its own nest ... .[68]

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[67] <u>Ibid</u>., pp. 100-101.

[68] <u>Ibid</u>., p. 102.

Flam soothes the crowd with the information that the directors have decided on a temporary suspension of payments as a safeguard against the Whigs but that the bank's notes will soon be redeemed with a new issue of "superior paper." Then, having distracted the attention of the people from the probable loss of their deposits, he adroitly makes his escape "... under nine distinct rounds of applause."[69]

Flam further exhibits his gift of facile obscurantism after the bank has suspended specie payment and closed its doors. There is severe financial distress and unemployment in Quodlibet. The building boom ceases. Trade becomes sluggish. But Flam is not concerned. He explains how this state of affairs can be turned to the advantage of the New Lights. The eight principal mercantile houses of Quodlibet are all owned by Whigs, he points out.

> It was very apparent, after the Hon. Middleton Flam drew the attention of the club to this fact, that these houses had combined to produce an utter prostration of business, solely for political effect, and that the malevolence of four of the most thriving among them had gone so far as even to render themselves bankrupt, and to break up, for no earthly purpose but that of making the administration unpopular.[70]

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[69] Ibid., p. 103.

[70] Ibid., pp. 172-173.

Theodore Fog is enthusiastic about the proposal to make the merchants scapegoats. They are a first rate subject for a stump speech, he observes.

> ... they are a monstrous little knot of fellows anyhow -- and comparatively speaking, of no sort of account, in the way of voting. Having the handling of a good deal of cash, and plenty to do in the way of giving and taking of promissory notes, you can slap upon them the argument of the Money Power with tremendous effect: you can tickle them with the whip of Aristocracy in perfection; and you can run 'em down with the text of the money-changers in the Temple, and all that sort of thing, to a nicety. Besides, there are so few of them that either can make a speech before the people, or, if they can will take the trouble to follow a man about for that purpose, that you are not likely to be pestered with their replies. Capital animals for an opposition, they take a lathering so quiet! ... Our people can be taught to hate a merchant like snakes -- because if he does get on well with his business, and makes a little fortune, we can call him a Rag Baron, a Ruffle Shirt, a Scrub Aristocrat ... and if he fails, as the greater part of the poor devils do, we can get up a still worse cry against him for turning the humble and honest laborer out of employment, grinding the faces of the poor, depriving the widow and the orphan of their bread, and coining the sweat of the Bone and Sinew's brow to feed Usurers, Brokers, and Shavers. And, by-the-by, these arguments are quite good against manufacturers and Whig master-mechanics.[71]

Fog is indeed a master of name calling, and his exuberance is unbounded in this passage. He then goes on to explain that in addition the merchants will make excellent subjects for political and economic experiments.

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[71] Ibid., pp. 173-174.

> ... when we want to make an EXPERIMENT, -- why, of course, we go to the merchants. Here's all this currency business, especially the tail of it, the Sub-Treasury -- fine thing to stir up the people with -- sounds well in theory, though a little mischievous in practice. Well sir, we test it on the merchants: we get the popularity, they get the damage. The approved philosophical mode to try a dangerous experiment, is to attempt it on a cat: -- sir, The Merchants are our cats.[72]

This is the old American story of minority rights and the tyranny of the majority, but Kennedy gives it a strong party interpretation. The minority -- the Whig merchants, manufacturers, and master mechanics -- are the victims not only of the pernicious schemes which the Democratic leaders cook up to line their own pockets, but also of their campaign of deception by which they seek to avoid any blame for the disastrous results of their schemes. Thus the minority is doubly injured. Fog and Flam typify the Democratic leaders in their anti-rich demagoguery, their brazen reversal of position, their blaming the victims of their mad projects for the misery which they themselves have brought on the community.

This, then, is the heart of Kennedy's satire of Jacksonian Democracy. He presents the Democrats as a crew of opportunists -- demagogues who set the honest men of society against each other and mislead the ignorant major-

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[72] Ibid., p. 175.

ity, whose sole concern is their own personal advancement and who will make any sacrifice of the public welfare necessary to achieve it. Their only principle is to hold their offices by staying on the side of the majority. This is implicit throughout Quodlibet, but Kennedy brings it out sharply in several passages, the most biting of which occurs toward the end of the book. The fictitious author, Solomon Secondthoughts, observes that the reader may have wondered how he could relate with such composure and complacency changes which superficial thinkers might suppose were reversals in the principles of the New Lights. One who looks more deeply at the New Light Quods, however, will see that their principles lie much deeper than their measures.

> We hold a change of measures, a change of opinions, a change of doctrine, and even a change of established facts, as nothing. But a change of men we totally abhor; a change of office, unless in the way of promotion, we utterly discountenance; and a change from a majority to a minority we execrate as wholly abominable, detestable, and in nowise to be endured. Now, in our creed, men, officers, and majorities make up the complex idea of what we denominate principle.[73]

The central principle of the Democrats is to stay in office. In order to accomplish this they bewilder the people

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[73] Ibid., pp. 216-217.

with catch-words, lie to them while they pursue the very policies which they condemn in their speeches and cooperate with the very groups that they claim to be opposing. Any careful observer of the Democratic Party, Secondthoughts says, can see how it says one thing and does another, how it dupes the people with promises of a sound currency while it is introducing "... the cheap and convenient system of a government paper in the shape of Treasury notes ... ," how it rants against "... wealth, chartered privileges and monopolies ..." while it is using the "... services and money of the largest corporations created by the States ... ."[74] A crew of lying demagogues, the Jacksonian Democrats are actually in league with the so-called enemies of the people against whom they rail in their stump speeches.

Thus Kennedy censures his opponents' abuses of the majority principle rather than the majority principle itself. By 1840 that was no longer discreet in American politics. He therefore shows that the Democrats are cheap demagogues, creating and cajoling a false majority of numbers, a majority of opinions. American democracy under Jackson and Van Buren, he alleges, has been spurious, has

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[74] Ibid., pp. 217-218.

been the "sway of numbers impelled by passion ... making their decree upon the prompting of a chief ... declaring their judgment on the instant, without thought, knowledge, or deliberation."[75] The masses under Jackson have been confused and misled by emotionally charged slogans and by false issues.

Such criticisms of majority rule by the Democrats are to be expected from a Whig before 1841, for until that time the Democrats were the majority party, the Whigs the minority party. The most vulnerable point of Kennedy's satire of Jacksonian cant, however, is that the Whigs were guilty of the same sins in the scandalous log cabin and hard cider campaign of 1840. They won the election in that year by beating the Democrats at their own game, by suppressing issues and ignoring principles, of which they had none anyway, by deceiving the people with "... catch-words, forms, and specious pretences."[76] Though Kennedy's raillery in Quodlibet is frequently delightful, though his exposure of Jacksonian sham is often just, his "... political bias is sharply and narrowly partisan."[77] All of his

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[75] "Demagogues," At Home and Abroad, p. 163.

[76] Ibid.

[77] Parrington, op. cit., II, 55.

Whigs are sober men of sense and integrity. They never appeal to the people's emotions. They make reasonable, restrained speeches. They oppose visionary and shady schemes. The evils and absurdities of party politics in the borough of Quodlibet are brilliantly unmasked, but nothing is told of the Whig practices in the neighboring borough of Thorough Blue. Kennedy's implication is obvious. Whigs do not behave at all like Democrats. Kennedy's comments on the election of 1840 reveal the same partisan bias. Not one satirical shaft is aimed against the vulnerable Whigs. Kennedy saves them all for the Democrats. He shows how the Democrats lie and defame the characters of their opponents: Tyler is presented as a slave owner in the north, Harrison as an abolitionist in the south; to counteract the hard cider campaign, Harrison is accused of being a drunkard. As if the Whigs never lied or defamed character, or stooped to demagoguery! A more detached mind, a greater satirist than Kennedy would have struck at the disgraceful subterfuge, slander, and opportunism on both sides.

Implicit in Quodlibet is the old conservative distrust of government by the people.

Something of the old aristocratic contempt for the plain man functioning as a political animal lingers in its pages, which the bubbling humor does not wholly conceal. ...

> The satire sparkles amusingly, but it is drawn from the old Federalist vintage and it preserves the flavor of a time when gentlemen frankly resented the rule of the unwashed majority.[78]

Though Kennedy does not openly resent being ruled by "the unwashed majority," his yearning for an aristocracy of wealth and talents, of virtue and intelligence is not far below the surface of his effervescent party satire and can easily be detected by the careful reader. Despite his denial that fixed economic classes exist in America, despite his confused theory of the majority of minds as opposed to the majority of opinion, Kennedy's criticism of majority rule does not differ fundamentally from that of the Federalists. He accuses the majority led by the Democrats of doing many of the things which the Federalists had said it would inevitably do once it got in power, of bringing on evils which the Federalists had warned were inseparable from democracy. The people in Quodlibet, unable to grasp the real issues, listen to the siren song of the demagogues. As a result they put incompetent men in office, they carry out party orders like well drilled soldiers, they support their enemies and turn against their real friends. They aid the cheap politicians in plundering the national treas-

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[78] Ibid., pp. 55-56.

ury and public domain, in bringing on a depression from which they, the people, suffer the most severely. The people are levellers in Quodlibet. They resent any economic, social, or intellectual superiority to themselves, and though they have not yet confiscated the property of the minority and deprived it of other fundamental rights, the foundations of such injustice have been laid in the envy which their demagogic leaders have instilled in them. The stupidity and malice of the people who listen to Fog and Flam is evident. Except for Kennedy's illogical implication that they would be better off under Whig leadership, this is merely Federalism in a slightly different coat.

III

Censure of the majority also appeared in the drama during the Jackson era. It took the form of a Whig attack on the Jacksonian majority and on the methods of the Democratic leaders, but it can also be considered as a counter drift to the main current of the American drama of the time, which was strongly pro-majority. A favorite subject in American comedy in the early nineteenth century was the naturalness and healthiness of American democratic society

and the individuals who composed it in contrast with the artificiality and decadence of European aristocratic society and the social types which it produced. This is the theme of The Bucktails, or Americans in England by James Kirk Paulding, a play written soon after the war of 1812 which contrasts the wholesomeness of three Americans with the moral sickliness of the British aristocrats whom they meet.[79] The Noble Exile by William Irving Paulding, son of James Kirk Paulding, satirizes a foreign count and the Bostonians who lionize him.[80] Expressions of the American democratic faith also occurred in romantic tragedy during the Jackson era. The Gladiators by Robert Montgomery Bird portrays the insurrection led by Spartacus against the Romans. Spartacus typifies "... the eternal strugle for freedom against tyranny ... ."[81] The long blank verse speeches in such plays as The Gladiators gave ample opportunity for the assertion of democratic principles.

It is against this background of dramatic exaltation of democracy as well as against the background of party

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[79]Arthur H. Quinn, A History of the American Drama from the Beginning to the Civil War, New York and London, 1923, p. 319.

[80]Ibid. Both of these plays are contained in American Comedies, by J. K. and William Irving Paulding, Philadelphia, 1847.

[81]Quinn, op. cit., p. 230.

politics that dramatic censure of the majority should be considered. Whigs and Democrats or Love of No Politics, a satire of Jacksonian party methods, is both a partisan attack on the Democrats and a questioning of the assumptions about democracy which were dominant in the drama at the time. Many of the same criticisms which Kennedy makes of the Jacksonian majority and its demagogues occur implicitly or explicitly in this play, which was published in 1839 and produced in Philadelphia in 1844.[82] The purposes of the play as stated in the preface by the supposed author, J. E. Heath,[83] are nationalistic, realistic, moral, and satirical. The author wishes to demonstrate that contemporary America contains ample material for drama without resorting to remote ages and nations for incidents, that dramatic interest may be sustained by simple, natural ordinary occurrences without the aid of extravagant and wild incidents, that obscene and profane language are unnecessary on the stage. He adds a final and a most important purpose,

> ... to hold up to ridicule the despicable arts of demagogism, if the expression may be pardoned, which are now practised to such a frightful extent in our country, and which, if not rebuked in every legitimate mood, will most assuredly endanger our free institutions.[84]

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[82] Ibid., p. 284.

[83] Ibid.

[84] Whigs and Democrats or Love of No Politics. A comedy in three acts, Richmond, 1839, p. vi.

The chief characters of the play are Roundtree, the local Democratic boss, a tavern keeper and militia major; Mrs. Roundtree; Catherine Roundtree, their daughter; General Fairweather, a member of Congress and candidate for reelection on the Democratic ticket; Henry Fairweather, his son; and Mr. Worthington, a wealthy country gentleman, a Whig but nevertheless a close friend of General Fairweather.

The action of the play, laid in rural Virginia, opens with Roundtree and his wife quarrelling over the expense of their daughter Catherine's finishing school education. Roundtree considers it more than a waste of money. It is actually putting money to a bad use. He positively disapproves of the results of Catherine's education -- of her newly acquired fine manners and good taste, of her "new fangled town" notions and "aristocratic ideas."[85] Catherine, who is a sensible cultivated girl -- a complete contrast to her vulgar, ignorant parents -- wonders why she should not be genteel and intelligent. So she asks one of her father's neighbors and henchmen.

Cath. Jemmy, why should there be anything so shocking in being a lady?

Chipps. Oh nothing at all, except that your father and I are true blue democrats. We are the people's men,

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[85] Whigs and Democrats, Act I, sc. 1, pp. 8-10.

and entirely agin those folks who set themselves above the rest of human natur'.[86]

These were the kind of levelling sentiments, this was the false concept of democracy, this was one form of the "tyranny of the majority" which Cooper, Kennedy, and others were deploring at the time this play was written.

With his warped democratic ideas, his ignorance, his vulgarity, Roundtree typifies the lowbrow, disreputable militia officer that inspired James Fenimore Cooper's caustic remarks on the New York militia:

As soon as the privates had the power to elect their own officers, the position of a major-general in the militia ceased to be respectable -- the militia itself fell into general contempt, where it now is, and where it will ever remain until a different class of officers shall be chosen. The people can do a great deal, no doubt, but they cannot make a "silk purse out of a sow's ear." As soon as officers from the old classes shall be appointed, the militia will come up; for in no interest in life is it

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[86] Ibid., Act I, sc. 2, p. 17. Remarks on the levelling tendency of American democracy occur incidentally in The Politicians, a play not concerned with satirizing the majority but with the unscrupulous chicanery of rival candidates for office. One of the most effective tricks of the candidates is to pose as plain, common men, without educational or social advantages. They should appear dressed as shabbily as possible with several days' growth of beard on their faces. Thus they will gain popular favor and avoid any danger of being mistaken for "aristocrats." For "if the popular nose snuf an aristocrat nine miles off, its delicacy is offended, and it veers instantly the other

so material to have men of certain habits, and notions, and education, in authority, as in those connected with the military service. ... citizens never can be, and never will be turned into soldiers at all, good or bad, until proper officers are placed over them.[87]

Major Roundtree is not a proper officer.

The main action of the play concerns General Fairweather's attempt to retain his seat in Congress with the help of Major Roundtree. It is complicated by Henry Fairweather and Catherine Roundtree's love. General Fairweather is Kennedy's Middleton Flam to a "T." Early in the second act he tells his son Henry that Roundtree once in motion "... is altogether irresistible," that he has thirty to forty voters "completely at his disposal" which he, the General, stands badly in need of. When Henry asks him if he thinks this speaks well for self-government, General Fairweather replies that that is just the kind of question a green young book-worm would ask, that "... these notions of human equality are mere empty speculations, and that we are obliged to take men, not as we would have them to be, but as we find them in reality."[88]

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way -- to catch the odor, more grateful to its organ, of gentle loaferism." The Politicians, Act I, sc. 1, The Various Writings of Cornelius Mathews, New York, 1843, p. 121. The play was written in 1840. Quinn, op. cit., p. 285.

[87]The Redskins; or, Indian and Injin. Being the Conclusion of the Littlepage Manuscripts, New York, 1881. p. 150.

[88]Whigs and Democrats, Act II, sc. 1, pp. 25-26.

Henry then expresses wonder at the General's frequent professions of confidence in the wisdom and virtue of men. The General explains that most men have two opinions on nearly every subject, "... one for the public, and another for their own closets." Those who are foolish enough to come out with their true opinions at the wrong time "... are generally laid flat on their backs." When there is any advantage to be gained, it is important "... to chime in with other men's humors, prejudices, and delusions."[89] Thus the General reveals that, like Middleton Flam, he is a demagogue -- a hypocrite and dissembler -- that he has no principles, that if he cannot form or lead a majority he will join one already formed. He is in politics for what it will bring him, not to do his country a service.

> ... A statesman should take care of the public, and for so doing the public should take care of him. In these degenerate days a man cannot be expected to labor for nothing ... .[90]

The day of statesmen, of men who will sacrifice themselves for their country is gone, the playwright implies. In their place America has self-serving demagogues who follow a policy of expediency.

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[89] Ibid., pp. 26-27.

[90] Ibid., p. 28.

General Fairweather further shows his hypocrisy when he informs his son that he wants him to marry Clara Worthington, daughter of his Whig friend and that he wishes him to take a letter, proposing the match, to Mr. Worthington. The General dares not go near the Worthington house himself, lest he antagonize some of his Democratic constituency. So sending Henry, his son, on to the Worthingtons', the General tells Roundtree that he will stay at the inn over night.

> Some of my constituents may be passing, and may desire to know what the last Congress has been doing. (Aside) By the by, it would be a very puzzling inquiry.[91]

The General is unable to remember even his own speeches. When reminded, he pretends to remember opposing the bank and the tariff.[92]

A common political stratagem is satirized when Roundtree tells General Fairweather that Mr. Manly, the Whig candidate, has been making some progress in the neighborhood and adds

> Mark me, though! I wouldn't say this publicly -- not I. I tell the democracy if they'll only stand up to the rack, we shall carry the day.
> Gen'l. F. That is noble! It is one of the greatest of electioneering arts to appear confident of success

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[91] Ibid., p. 31.

[92] Ibid., Act II, sc. 2, p. 42.

with the certain prospect of defeat. I own to you, I think the contest will be a close one, and without intending to flatter, I believe every thing will depend upon your precinct.

Round. Like enough! but I think I've got the boys in good training hereabouts. I can make them wheel to the right or to the left with as much ease as I muster my battalion. I've only to blow a horn, and the rogues swarm around me like bees in summertime.[93]

These were the conditions which Leigh described in his speech on universal suffrage at the Virginia Convention in 1829. This was also Kennedy's majority of opinion, led by the nose by office seeking politicians.

General Fairweather's black servant, Cato, gives a remarkably illuminating analysis of his character, revealing his hypocrisy and snobbishness. He calls the General "... as great a palaverer as any in the universe." Palavering he defines as saying "one thing 'fore a man's face and another 'hind his back." Cato remarks that the General holds his head high, and is "Right civil too to the commonalty ... but he loves great folks and rich folks to distraction."[94] No man is a hero to his valet.

At the beginning of the third act General Fairweather tells Roundtree that his reelection will insure him a foreign embassy. Roundtree says that it should be so; to

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[93] Ibid., Act II, sc. 1, pp. 32-33.

[94] Ibid., Act II, sc. 2, p. 34.

the victor belong the spoils. He is thinking of putting in a claim for himself at the public crib one of these days. Just then Henry Fairweather returns from his visit to the Worthingtons', where he has seen Catherine Roundtree, who is a close school friend of Clara Worthington. There the two lovers have further cemented their union and have enlisted the aid of Clara and Mr. Worthington. When Henry announces his intention of marrying Catherine, the General forgets his dependence on Roundtree, throws caution to the wind, and flies into a violent rage.

> The daughter of Major Roundtree, the keeper of this tavern! Have you lost your reason? ... You wed the daughter of Major Roundtree? A Fairweather connect himself with the vulgar progeny of a tavern keeper, -- a low pot-house politician, -- a clownish Major of Militia?[95]

Middleton Flam might have acted in exactly the same way under similar circumstances, except that he probably would have been more restrained and adroit about expressing his disapproval to his son in order not to offend Roundtree.

Roundtree, of course, is furious at General Fairweather's snobbish sentiments and says this is

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[95] Ibid., Act III, sc. 1, p. 56.

very extraordinary talk coming from a good democrat.

Fair. Democracy, sir, has nothing to do with a man's private affairs. Democracy, sir -- is a matter of public concern.[96]

General Fairweather's remark sums up the evils of the Democratic politicians' concept of democracy; it is a public show, a political front, an effective way of reaping personal profit, not a way of life.

Roundtree sacrifices his party loyalty and the election to his pride. He gets his revenge on Fairweather by telling his cohorts that the General is a false Democrat, that he is really a snob and aristocrat at heart, that he is an opportunistic office seeker (all of which is true). No loyal Democrat, therefore, will vote for him. Roundtree's followers shout "Abominable, Monstrous, Down with him," and go off to drink.[97] Supine, the village school-

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[96] Ibid., p. 57.

[97] Ibid., Act III, sc. 3, p. 64. W. A. Caruthers, a southern liberal, comments on similar election conditions in New York. There is plenty of drinking and fighting close to the polls. The electorate is strictly organized; it knows nothing of the candidates. New Yorkers never have stump speeches at elections, "... and never personally know, or even see their representatives. These city mobocracies, composed as they are, principally of wild Irish, are terrible things ... ." W. A. Caruthers, The Kentuckian in New York. or, the Adventures of three Southerns. By a Virginian. 2 vols., New York, 1834, I, p. 163. Caruthers attributes the degradation of democracy to the ignorant, urban proletariat and implies that such

master, acting as a kind of chorus, makes the author's critical observation on this travesty of democracy:

> A practical commentary, this, on the freedom of elections! This is that divine vox populi, which we read and hear of! We are certainly the most free and enlightened nation under the sun.[98]

Soon after this General Fairweather works himself into a serious state of perturbation over the prospect of losing the election. He is torn between swallowing his pride, apologizing to Roundtree, accepting his daughter and thus winning the election, and sacrificing the election to his family pride and to his desire for a more desirable match for his son. But he does not vacillate long. His friend Worthington comes on, bringing Clara Worthington and Catherine Roundtree with him. He assures the General that Catherine is a suitable match in every way for his son, Henry, and advises the general to relent

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conditions do not obtain in the rural south. But the author of Whigs and Democrats thought otherwise apparently, for he lays his scene in rural Virginia and describes the same sort of corruption of democracy.

[98] Whigs and Democrats, Act III, sc. 3, p. 65.

and apologize to Roundtree. Attracted by Catherine's gracious manner and needing little encouragement to apologize anyway, the General hastens to tell Roundtree that he regrets his outburst and gladly accepts Catherine as his daughter-in-law. Roundtree easily persuades his voters that General Fairweather is all right after all, that he is a good Democrat and a worthy candidate. Like parrots they shout "Hurra for the Gineral!" and "Gineral Fairweather forever" and go off to vote, like the good Democratic robots that they are. Supine again comments on this pernicious result of majority rule and demagoguery:

> This is democracy with a vengeance! The Major is very kind to them in one respect however -- he saves them the trouble of thinking ... .[99]

Kennedy said the same of the New-Light Quodlibetarian Democratic cohorts of Flam and Fog.

But justice is done. General Fairweather, the snobbish demagogue, is defeated after all, even though he carries Roundtree's precinct. He undergoes a sudden unconvincing, unmotivated conversion at the end of the play. In a moralizing passage he repents his sins:

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[99] Ibid., Act III, sc. 4, pp. 71-73.

> ... I have learned that to pursue the phantom of popular favor, regardless of right or wrong -- to flatter the passions and follies of the multitude, with no better motive than our own advancement -- is not only demoralizing to them, but must, sooner or later, plant a thorn in our own bosoms to unfit us for the duties as well as for the happiness of life.[100]

This is the lesson which this pro-Whig, anti-Jackson play attempts to inculcate. Like Kennedy's Quodlibet in being less extreme than the anti-majority effusions of the Federalists, it nevertheless presents an unfavorable picture of the sovereign people. They are stupid and easily duped. They don't think and don't want to. Another way in which this play disparages the people is by contrasting their vulgarity, ignorance, and instability to the gentility and good breeding, the fine taste, education, and intelligence of the Worthington's, of Catherine Roundtree, and of Henry Fairweather. The play is both anti-Jackson and anti-popular.

IV

Similar criticisms of rule by the majority, along the Federalist-Whig line, were voiced by Edgar Allan Poe in several of his lesser known works. Brought up as the

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[100] Ibid., p. 80.

foster son and ostensible heir of a wealthy Virginia gentleman, accepted as an equal by the young aristocrats at the University of Virginia, conscious of his "superior powers of imagination and intellect," Poe considered himself a Virginia gentleman and held aristocratic political convictions all his life.[101] It is not surprising, therefore, to find Poe in the ranks of the Whigs. Writing in 1841 to his friend, F. W. Thomas, who had suggested that he apply for a government post of the sort that would give him ample time for literary pursuits, Poe expressed his eagerness for such a position and his sympathy with Whig principles.

> Do you seriously think that an application to Tyler would have a good result? ... My political principles have always been, as nearly as may be, with the existing administration, and I have battled with right good will for Harrison when opportunity offered ... .[102]

Poe's views on property rights and majority rule were conventional and traditional. As expressed in a review published in 1836, they differ from those of Adams

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[101] Ernest Marchand, "Poe as Social Critic," American Literature, VI, (March, 1934) pp. 42-43. For nearly all of the references used in discussing Poe, I am indebted to Marchand.

[102] The Complete Works of Edgar Allan Poe, ed. J. A. Harrison, 17 vols., New York, 1902, XVII, 91. Quoted by Marchand, op. cit., p. 31.

and Hamilton only in the stress which Poe lays on the importance of protecting slave property. Happiness is man's aim in life, according to Poe, and he seeks primarily the external means of achieving it.

> Foremost among these, and the equivalent which is to purchase all the rest, is property. At this all men aim, and their eagerness seems always proportional to the excitement, which, from whatever cause, may for the time prevail. Under such excitement, the many who want, band themselves together against the few that possess; and the lawless appetite of the multitude for the property of others calls itself the spirit of liberty.[103]

Revolutions by the majority, then, are designed really to appropriate the property of the few, not to give liberty to all men. Such were the purpose and effects of the French Revolution. And "... it should be remembered now, that in that war against property, the first object of attack was property in slaves ... ."[104] Poe gloomily viewed the attack on slavery in America as the precursor of an attack on all property rights.[105]

Poe also used other trite conservative arguments against democracy -- that it was impracticable as a form of government, that it resulted in a lawless despotism

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[103] Works, VIII, 267-268.

[104] Ibid., p. 269.

[105] Ibid.

of the majority. Both of these appear in Poe's fanciful, humorous tale, Some Words with a Mummy. The mummy, Count Allamistakeo, is brought back to life and interviewed by an American archeologist and his friends. He tells them of an ancient Egyptian experiment with democracy, the form of government in which "... there was suffrage ad libitum and no king."[106] Thirteen Egyptian provinces determined to be free; so they assembled all their wise men and concocted the most ingenious constitution conceivable.

> For a while they managed remarkably well; only their habit of bragging was prodigious. The thing ended, however, in the consolidation of the thirteen states, with some fifteen or twenty others, in the most odious and insupportable despotism that ever was heard of upon the face of the Earth.
>
> I asked what was the name of the usurping tyrant.
>
> As well as the Count could recollect, it was Mob.
>
> Not knowing what to say to this, I raised my voice, and deplored the Egyptian ignorance of steam.[107]

This same libellous criticism of democracy was repeated by Poe in more detail and with more vitriol in Mellonta Tauta, an imaginative satire in the form of a letter written in the year 2848. In this work Poe strikes at several of his bêtes noires. Chief among them is democracy. The fictitious letter writer cannot believe that such a ridiculous form of government ever really existed.

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[106] Works, VI, 136.

[107] Ibid.

> Pundit ... has been occupied all the day in the attempt to convince me that the ancient Amriccans governed themselves! -- did ever anybody hear of such an absurdity? -- that they existed in a sort of every-man-for-himself confederacy, after the fashion of the "prairie dogs" that we read of in fable.[108]

The most incredible thing about democracy apparently was its theory of equal rights.

> ... they started with the queerest idea conceivable, viz: that all men are born free and equal -- this in the very teeth of the laws of gradation so visibly impressed upon all things both in the moral and physical universe.[109]

Universal suffrage and the rule of the majority led naturally to demagoguery and political corruption among the "Amriccans."

> Every man "voted," as they called it -- that is to say, meddled with public affairs -- until, at length, it was discovered that what is everybody's business is nobody's, and that the "Republic" (so the absurd thing was called) was without a government at all. It is related, however, that the first circumstance which disturbed, very particularly, the self-complacency of the philosophers who constructed this "Republic," was the startling discovery that universal suffrage gave opportunity for fraudulent schemes, by means of which any desired number of votes might at any time be polled, without the possibility of prevention or even detection, by any party which should be merely villanous enough not to be ashamed of the fraud. A little reflection upon this discovery sufficed to render

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[108] "Mellonta Tauta," Works, VI, 207-208.

[109] Ibid., p. 208.

evident the consequences, which were that rascality must predominate -- in a word, that a republican government could never be anything but a rascally one.[110]

This passage links Poe with Kennedy in his disgust for American politics, but Poe went much farther than Kennedy in censuring democracy. He is closer here, and in the passage that follows, to Adams and Hamilton than to Kennedy.

While the ancient "Amriccan" philosophers who had been guilty of instigating the people to set up a democracy were devising new theories and schemes to remedy the state of anarchy which they had brought on

> ... the matter was put to an abrupt issue by a fellow of the name of Mob, who took everything into his own hands and set up a despotism, in comparison with which those of the fabulous Zeros and Hellofagabaluses were respectable and delectable. This Mob (a foreigner, by the by), is said to have been the most odious of all men that ever encumbered the earth. He was a giant in stature -- insolent, rapacious, filthy; had the gall of a bullock with the heart of an hyena and the brains of a peacock. He died, at length, by dint of his own energies, which exhausted him. Nevertheless, he had his uses, as everything has, however vile, and taught mankind a lesson which to this day it is in no danger of forgetting -- never to run directly contrary to the natural analogies.[111]

Democracy was "contrary to the natural analogies," apparently, and therefore impracticable because human nature requires the restraint of laws and cannot be left to im-

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[110] Ibid.

[111] Ibid., pp. 208-209.

pose these laws on itself. Only animals can live under such conditions of anarchistic self-government, for they are guided by instinct.

> As for Republicanism, no analogy could be found for it upon the face of the earth -- unless we except the case of the "prairie dogs," an exception which seems to demonstrate, if anything, that democracy is a very admirable form of government -- for dogs.[112]

If Poe was not exaggerating in these passages for the sake of good natured humor -- and his other writings indicate that he was not, he certainly had an extreme aristocratic bias against democracy. Even though there is some possibility that Poe was satirizing the letter writer in Mellonta Tauta, these passages on democracy reveal that his reaction against contemporary politics took an extreme form. He repeats most of the Federalist criticisms of majority rule, couching them in terms more extreme than even those used by Adams, who said that majority rule leads to confiscation of property and the invasion of other minority rights, that popular governments go through a cycle of attempted rule by the majority, of anarchy, and finally of despotism under a single ruler. But Poe repeats these criticisms in terms so completely unqualified that their effect is an absolute condemnation of democracy in

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[112] Ibid., p. 209.

any form, even with checks and balances. Perhaps these subtle distinctions were beyond the ken or did not interest this extreme romantic, concerned as he was with supernal beauty and exquisite horror. At any rate his political opinions and stock anti-democratic arguments appear only in his inferior, minor works. They did not inspire him to write any satire comparable in quality to his tales of ratiocination and of the arabesque. But then, satire was not his forte, and politics were not his main interest.

Poe's shallow satire of democracy reveals that he had no adequate grasp of the democratic concepts of popular sovereignty and law. To him, self-government meant no government, democratic liberty meant license. He repeats the traditional Federalist criticisms of democracy with such vehemence that the conclusion seems justified that, like Hamilton, he preferred a government in which there was a "permanent will" -- an aristocracy of some sort, perhaps under a limited monarch. But perhaps he did not know what form of government he preferred; perhaps his attack on democracy was merely an example of his quarrelsome perversity, an attempt to make his contemporaries hear his shout of defiance.

CHAPTER VII

COOPER'S CRITICISM OF MAJORITY RULE

A sharp contrast to the aristocratic tirades of Poe and the partisan satire of Kennedy are the criticisms which James Fenimore Cooper made of rule by the majority in America. Written by an ardent admirer of the old Federalist aristocracy[1] who was at the same time a staunch Jacksonian Democrat,[2] these strictures against democratic abuses are entirely free from the party spleen and bias which mar Kennedy's Quodlibet, from the misunderstandings, misinterpretations and distortions of democratic dogma which occur in the writings of Poe. Cooper's novels and essays reveal a clear comprehension of the meaning of democracy, of its superiority to other forms of government, and of America's failure to achieve it in an ideal form. But nowhere does Cooper attribute the shortcomings of American democracy to his political opponents, the Whigs. In The Monikins, a satirical novel, as in his

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[1]Parrington, Main Currents, II, 223.

[2]Dorothy Waples, The Whig Myth of James Fenimore Cooper, New Haven, 1938, p. 50.

other works, Cooper's criticisms of the popular majority cut across party lines. His satire is directed against party politics in general, not against the Whigs.

Cooper's critique of American democracy occurs in the works which he wrote after his return from Europe in 1833. During the seven years which he spent abroad Cooper several times gave vigorous expression to his democratic ideals, for his undemocratic environment strengthened his democratic faith and stimulated him to defend his country against its foreign critics. His Notions of the Americans: picked up by a Travelling Bachelor, published anonymously in London in 1828, was an attempt to explain and defend American life. In the course of his explanation, Cooper presented a strong case for universal suffrage and republican liberty. His defense of democracy and counterattack against aristocracy received its complete and final expression in his so-called European trilogy, composed of The Bravo, The Heidenmauer, and The Headsman. Laid at the beginning of the modern era, when medieval institutions still survived, these novels had as their purpose the dissipation of the aura of romance with which Scott had surrounded medieval institutions in his novels. Cooper chose as the theme of his trilogy "...the decline of the old order before the growing liberalism of the

new."[3] The Bravo exposes the corruption of oligarchic government in Venice; The Heidenmauer describes the coming of the Reformation to a Benedictine monastery and draws a parallel between Lutheranism and American democracy as liberating forces. The Headsman, laid in the early eighteenth century, deals with the effect of an outworn medieval law requiring the son to follow his father's profession and points to the glorious future of America, which is free from such inherited prejudices.[4]

But though Cooper rejoiced that America was not impeded by such traditional hindrances to progress, he became acutely aware of the defects of American society upon his return home in 1833. Having defended democracy in the abstract and idealized his country at a distance, believing as he returned home that the democracy of Monroe and John Quincy Adams still prevailed, he was not prepared for the changes that had occurred during his absence. He found the actuality of American democracy too gross for his delicate taste and was violently repelled. Like Mr. Effingham in Homeward Bound, Cooper had no conception of what the Jacksonian revolution had done

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[3]Robert E. Spiller, Fenimore Cooper Critic of his Times, New York, 1931, p. 217.

[4]Ibid., pp. 217-222.

to the America he knew and loved: "You have been dreaming abroad, Ned Effingham, while your country has retrograded, in all that is respectable and good, a century in a dozen years."[5] This passage epitomizes Cooper's reaction to American society of the thirties and forties, a reaction natural to "... an English squire of the old school turned republican, who did not quite like the company he found himself in."[6] Heir to many of the "stalwart conservatisms"[7] of his father, Judge William Cooper, and of the Federalist environment in which he was bred, Cooper set about trying to discover "... some working agreement between the old America and the new ...," some means of reconciling the greater justice of democracy with the " ... reputed excellencies of the traditional aristocratic order,"[8] with the gracious living of the America of his father, of Governor Jay, of the Van Rensselaers, of Washington, Hamilton, and Adams.

The essence of this problem as Cooper saw it lay in harmonizing the individual inequality and political equality which necessarily coexist in a democracy. Like

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[5]Homeward Bound; or, The Chase. A Tale of the Sea. New York (Appleton), 1881, p. 241.

[6]Parrington, op. cit., II, 223.

[7]Ibid., p. 224.

[8]Ibid., p. 223.

Adams, Hamilton, Kent and the other American conservatives, Cooper took a realistic view of human abilities. "The celebrated proposition contained in the declaration of independence is not to be understood literally," he maintained.[9] Men are unequal physically, intellectually, and morally. They are equal only in their political and legal rights in a democracy. The natural consequence of these equal rights and unequal abilities is inequality of condition, especially inequality in the ownership of property.

> If we would have civilization and the exertion indispensable to its success, we must have property; if we have property, we must have its rights; if we have the rights of property, we must take those consequences of the rights of property which are inseparable from the rights themselves.[10]

In other words, we must be content with inequality if we are to be free to acquire and own property. But the paradox of democracy is that the means which are essential to the preservation of individual liberty may become actually destructive of it. According to Cooper, there can be no freedom "unless the body of the nation possess... the legal power to frame its laws according to its

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[9] The American Democrat, New York, 1931, p. 41.

[10] Ibid., p. 42.

wants."[11] The majority of the nation is to determine what laws shall regulate individual acts. But the majority should give the maximum liberty of action to each citizen so long as he does not infringe the rights of others. For "individuality is the aim of political liberty."[12] But majorities are prone to forget that the sole reason for the existence of free political institutions is the protection of individual rights.

> It is a curious circumstance, that, in endeavouring to secure the popular rights, an effect has been produced in this country totally opposed to this main object. Men have been so long accustomed to see oppression exercised in the name of one, or in the name of a few, that they have got to consider the sway of numbers as the only criterion of freedom. Numbers, however, may oppress as well as one or a few, and when such oppression occurs, it is usually of the worst character.[13]

Cooper accused the American majority of so violating individual rights.

> The habit of seeing the public rule, is gradually accustoming the American mind to an interference with private rights that is slowly undermining the individuality of the national character.[14]

Cooper's first expression of dissatisfaction with American democracy appeared in The Monikins, a satirical

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[11] Ibid., p. 44.

[12] Ibid., p. 174.

[13] Ibid.

[14] Ibid.

novel published in 1835, soon after his return from Europe. It was followed in 1838 by The American Democrat, a series of essays on government in general and American government in particular, and in the same year by two novels, Homeward Bound and its sequel, Home As Found. In his preface to The American Democrat, Cooper explains his peculiar position in America and points out the most vexing faults which he observed in his countrymen on his return home.

> A long absence from home, has, in a certain degree, put the writer in the situation of a foreigner in his own country; a situation probably much better for noting peculiarities, than that of one who never left it. Two things have struck him painfully on his return; a disposition in the majority to carry out the opinions of the system to extremes, and a disposition in the minority to abandon all to the current of the day, with the hope that this current will lead, in the end, to radical changes. Fifteen years since, all complaints against the institutions were virtually silenced, whereas now it is rare to hear them praised, except by the mass, or by those who wish to profit by the favors of the mass.[15]

This misrule by the majority is one of the principal subjects of Cooper's criticism in both Homeward Bound and Home As Found and is satirized in The Monikins, though it is not the chief object of Cooper's satire in the latter work.

The principal object of his satire in The Monikins

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[15]The American Democrat, viii-ix.

is the social stake theory, the old Federalist notion that suffrage and office holding should be the exclusive privilege of men of principles and property, that government should be restricted to those holding a stake in society in the form of some sort of property. In The Monikins Cooper completely abandoned this main tenet of Federalism and in doing so gave up the central article of his father's political creed. Nevertheless he retained a strong attachment throughout his life to many of the old aristocratic values. Unlike Cooper, Sir John Goldencalf, hero of the story, inherits the social stake theory along with a princely fortune from his father, Thomas Goldencalf, whose slogan was "Property is in danger." Cooper's criticism of the social stake theory runs throughout The Monikins, but most of it occurs after young Sir John arrives in the land of the Monikins, a species of monkeys which speak and live like human beings. There he visits the countries of Leaphigh, which represents England, and Leaplow, which represents the United States. In Leaplow Sir John's eyes are opened to the fallacies of his unexamined, inherited theory of government. Brigadier Downright, a minor politician, points out to him that government does not exist solely to protect property rights, but also to protect the personal rights of all and to promote the general welfare. Therefore, reasons the brigadier,

"... if the object (of government) be the general good, you have no choice but to trust its custody to the general keeping."[16] Old Thomas Goldencalf's fear about property being in danger was unfounded. The mass of the poor people are not likely to strip the rich of their property unless they have been oppressed, for all reactions imply abuses.

According to our monikin histories, all the attacks upon property have been produced by property's grasping at more than fairly belongs to its immunities.[17]

Another fallacy of the social stake theory is that it identifies wealth and virtue, whereas actually the rich are as selfish as the poor. Government by property will be government in the interests of property.

Your social-stake system supposes that he who has what is termed a distinct and prominent interest in society, will be the most likely to conduct its affairs wisely, justly, and disinterestedly. This would be true, if those great principles which lie at the root of all happiness were respected; but unluckily, the stake in question, instead of being a stake in justice and virtue, is usually reduced to be merely a stake in property. Now, all experience shows that the great property-incentives are to increase property, protect property, and to buy with property those advantages, which ought to be independent of property, viz: honors, dignities, power and immunities. ... We have had the property-principle carried out thoroughly in our practice, and the result has shown that its chief operation is to render property as intact as possible, and the bones,

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[16]The Monikins, New York (Appleton), 1881, p. 344.

[17]Ibid., p. 345.

and sinews, and marrow of all who do not possess it, its slaves. ... the time has been, when the rich were even exempt from contributing to the ordinary exigencies of the state.[18]

In The Monikins, then, Cooper rejects the Federalist myth of men of principles and property as well as the Federalist theory that the object of government is to protect property and the Federalist fear that the poor majority would pillage the coffers and estates of the wealthy minority.

Another Federalist argument closely related to these which Cooper discards in The Monikins is that the tyranny of the many is the worst of all tyrannies. This has become a common opinion, Brigadier Downright tells Sir John, because the representatives of the minority have done most of the talking, have been permitted to present their version of rule by the majority as the true one. The majority has not been allowed to draw its own picture. Actually the picture which has been presented of the majority is false and unjust.

As cruelty is commonly the concomitant of cowardice, so is oppression nine times out of ten the result of weakness. It is natural for the few to dread the many, while it is not natural for the many to dread the few. Then, under institutions in which the many rule, certain great principles that are founded on natural justice, as a matter of course, are openly recognized;

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[18] Ibid., pp. 402-403.

> and it is rare, indeed, that they do not, more or less, influence the public acts. On the other hand, the control of a few requires that these same truths should be either mystified or entirely smothered; and the consequence is injustice.[19]

But Cooper makes several criticisms of majority rule in The Monikins. The chief trouble with majority rule in Leaplow (America) is its levelling tendency. The majority in this country is anti-individualistic. Personal development above the level of the mass is strictly forbidden by law. In a monikin the seat of the reason is in the tail, which is a mark of personal distinction and social caste. In Leaphigh (England), therefore, the monikin tail is cultivated and allowed to grow to its full luxuriant length. But in Leaplow this noblest ornament of the monikin is bobbed to a stub of uniform size, lest anyone rise above the mass. The reason for this is explained to Sir John Goldencalf by Judge People's Friend, a Leaplow politican. The Leaplowers admit that the seat of the reason is in the tail, and it is precisely because of this that the tails are docked. Since nature has distributed these ornamental appendages very unequally and since governments are established to equalize these natural inequalities, long tails are denounced in Leaplow as anti-republican.

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[19] Ibid., p. 425.

> The law requires, therefore, that every citizen, on attaining his majority, shall be docked agreeably to a standard measure that is kept in each district. Without some such expedient, there might be an aristocracy of intellect among us, and there would be an end of our liberties.[20]

This custom of tail docking leads to considerable demagoguery. When Judge People's Friend wishes to gain a new office, he has all of his hair shaved off and undergoes a new amputation of his tail. He is in the best of spirits, however, after this painful operation, telling Sir John that he never had better prospects in his life. Brigadier Downright explains his strange attitude to Sir John.

> In Leaplow, humility is every thing. The monikin who will take care and repeat sufficiently often that he is just the poorest devil going, that he is absolutely unfit for even the meanest employment in the land, and in other respects ought to be hooted out of society, may very safely consider himself in a fair way to be elevated to some of the dignities he declares himself the least fitted to fill.[21]

Though the tail is proscribed in Leaplow as anti-republican,

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[20] Ibid., p. 260. On the political satire in The Monikins see John F. Ross, The Social Criticism of Fenimore Cooper, University of California Publications in English, III, No. 2, 82-86. Ross's monograph is a useful general treatment of Cooper's social ideas.

[21] The Monikins, p. 428

> ... a monikin may wear one abroad a mile long with impunity, if he will just submit to a new dock when he comes home, and swear that he is the most miserable wretch going. If he can throw in a favorable word, too, touching the Leaplow cats and dogs ... they will pardon treason.[22]

If one is to succeed in Leaplow politics he must praise the people's cats and dogs and compare them favorably with the Leaphigh cats and dogs, not for any particular merits of the animals themselves, but merely because they are the people's.[23]

Like demagoguery, uniformity of opinion is also an offshoot of the levelling process of majority rule in Leaplow. Strict conformity to public opinion is demanded of all Leaplowians, who are a commercial people and like to deal in averages. Judge People's Friend explains the situation in Leaplow to Sir John.

> We are particularly averse to any thing like inequality. Ods zooks! it is almost as great an offence for a monikin to know more than his neighbors, as it is for him to act on his own impulses. No -- no -- we are truly a free and independent commonwealth, and we hold every citizen as amenable to public opinion, in all he does, says, thinks or wishes.[24]

This conformity to group opinion appears in politics also. Public opinion in Leaplow is divided according to

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[22] Ibid.

[23] Ibid., p. 429.

[24] Ibid., p. 263.

two great political categories, the Horizontal and the Perpendicular.[25] Two lines are drawn in every community, along which the people are required by custom to range themselves. This is called "toeing the mark," or "social position number one."[26] Social position number two involves a gyration, but a relatively simple one, a mere right about face, in which the Leaplower turns about and shifts to the other side of the party line. Social position number three, however, is more difficult, since it requires a somersault, performed so that the monikin turns head over heals "... coming down in a way tenaciously to toe the mark."[27] But the entire population of Leaplow is nevertheless expert in assuming all three of these positions and can turn the somersault of position number three with ease when so commanded. Both party lines

> ... had got to be so expert, that, at the word of command, they would throw their summersets in as exact time, and quite as promptly as a regiment of guards, would go through the evolution of slapping their cartridge-boxes. ... There is now and then a stumbler; but he is instantly kicked out of sight and uniformly counts for nothing.[28]

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[25] Ibid., pp. 263-264.

[26] Ibid., pp. 253-254.

[27] Ibid., p. 256.

[28] Ibid., p. 257.

But only an adept at politics can perform the gyration required for position number four. He who can perform it will go far in Leaplow politics. It involves a sommersault combined with a shift to the opposing party line. Judge People's Friend demonstrates it to Sir John. He

> now toed the mark again, placing himself within a few feet of the point of junction between the two lines; and then he begged me to pay particular attention to his evolution. When all was ready, the commodore threw himself, as it were, invisibly into the air, again head over heels, so far as I could discover, and alighted on the antagonist line, toeing the mark with a most astonishing particularity.[29]

The judge proudly tells Goldencalf that he has performed this gyration five times during his political career.

Another manifestation of the conformity of the people in Leaplow is their sheep-like herding after political leaders. One set of leaders in Leaplow is known as the "Most Patriotic Patriots." They "are always with a majority."[30] The leaders of the opposing party are called "God-likes." These God-likes are something like a saint in the Catholic calendar.[31] They go through a certain amount of temptation with a whole skin, and have their cause pleaded before a court before they achieve their high status. They are also like a locomotive in

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[29] Ibid., p. 258.

[30] Ibid., p. 414.

[31] Ibid.

that they draw their adherents after them, fast or slow, to the right or left, as they please. The advantage to the followers of a God-like is that they are easily dragged through their political duties along the party line, without having to expend the effort of thinking. This further explains the docking of tails, the seat of the reason, in Leaplow.

> They find it more convenient to give up the management of their affairs to some one of these God-likes, and fall into his wake like the tail of a comet, which makes it quite unnecessary to have any other cauda.[32]

Thinking and inequality are also avoided by the manner in which offices are filled in Leaplow. Offices are distributed according to the great "rotatory principle," or rotation in office. Since all men are believed to be equal and are made so by the amputation of their tails, offices are filled by a lottery every twelve months. The names of the citizens are put into one enormous box and the names of the offices into another. A name and office are drawn forth at the same time, and the office is assigned to a citizen for a twelvemonth.[33] Thus opportunity is equalized in Leaplow.

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[32] Ibid., p. 415.

[33] Ibid., pp. 252-253. Cooper repeats the same argument against equalitarianism and rotation in office in The American Democrat, p. 72, and in Homeward Bound, p. 110.

No one need worry about who is best qualified for a given office. Nor need a Leaplow office-holder concern himself about excelling a political opponent in performing the duties of his office, for he will be replaced at the end of a year anyway. Such are the effects of a quantitative test, the majority vote, rather than a qualitative test in choosing men for all offices, Cooper implies.

The chief fault which Cooper found with the American majority on his return home, therefore, was its hostility to individualism. This was the worst possible transgression which it could commit in the opinion of a man who conceived the end of political liberty to be the protection of individuality. Yet Cooper's criticisms of the majority in The Monikins are on the whole restrained, moderate, just, balanced. Here there is nothing approaching the extreme, violent, bitter outbursts which occur in The Redskins and The Ways of the Hour.

Homeward Bound and Home As Found, however, are a step away from the relative mildness of The Monikins towards the bitterness of these later novels. Published in 1838, five years after Cooper's return to America, they reflect his growing dissatisfaction with the society in which he found himself. The anti-individualism of the majority in America is still the burden of Cooper's criticism in these two tales which relate the return of

the Effingham family to America after a sojourn in Europe of a dozen years. But in Homeward Bound and Home As Found the anti-individualism which Cooper censures is social, not political as it is in The Monikins. In these novels Cooper began in earnest the battle which was to occupy the rest of his life, the battle against the extension of the majority principle by public opinion to cover purely personal affairs -- intellectual culture, the type of architecture one chooses for one's house, even individual habits of living such as dress, speech, and manners. Courageously and relentlessly Cooper fought this particular despotism of the majority which de Tocqueville and Marryat accused American democracy of fostering.[34]

Mr. Dodge, a vulgar American in Homeward Bound, perfectly exemplifies the state of mind engendered by this misrule of the majority. Coming from "... a part of the country in which men were accustomed to think, act, almost to eat and drink and sleep in common ...,"

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[34]Alexis de Tocqueville, Democracy in America, I, 261-268. Capt. Marryat, C. B., A Diary in America, Part Second, II, 54-78. James Bryce, writing in 1887, minimized the danger of the tyranny of the majority in America. "The tyranny of the majority does not strike one as a serious evil in the America of to-day, though to be sure people are always foretelling the mischief it will do." "The predictions of Hamilton and De Tocqueville," Johns Hopkins University Studies in Historical and Political Science, 5th series, IX (Vol. V, 1887), p. 378.

a section in which no one's individuality is respected,[35] Mr. Dodge draws certain illogical inferences from the majority principle. He has such respect for the majority opinion that he believes it should govern all things. No man has a right to be peculiar in a free country, he holds. "It is aristocratic, and has an air of thinking one man is better than another."[36] If the people cannot "... control and look down peculiarity, or any thing they dislike...," they might as well be living under a despotism.[37] He considers the English institutions very narrow, for under them "... men come to fancy liberty applies to persons instead of majorities."[38] He even tries to apply the majority principle to the management of the ship Montauk. He attempts to organize majorities to influence the captain in the course he is sailing,[39] to force the abandonment of the Montauk for another American ship after she loses her masts in a storm.[40] Since he is a coward, he argues that a majority

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[35]Homeward Bound, 48-49.

[36]Ibid., p. 108.

[37]Ibid.

[38]Ibid., p. 483.

[39]Ibid., p. 104.

[40]Ibid., p. 198.

of the crew are not willing to risk recapturing the Montauk from the Arabs and suggests a vote to determine the will of the majority.[41]

His views on the rights and powers of the majority are shared by Mr. Bragg, Cooper's American vulgarian and demagogue in Home As Found. Like Mr. Dodge, a product of the communal society of backwoods New York, he too believes "... that because the mass rules in a political sense, it has a right to be listened to and obeyed in all matters ... ."[42] He fears that "... public opinion is not yet quite up to ..." the revised architecture of Mr. Effingham's house in the mountains west of Albany, and does not understand when Mr. Effingham remarks that he does not see "...what concern a majority ... can have with a house that does not belong to them."[43] During Mr. Effingham's absence abroad, the apprentices of the villages of Templeton have made a playground of the front lawn of his estate. When Mr. Effingham requests Mr. Bragg, as his caretaker and business agent, to order the boys off the lawn who are playing ball there, Bragg

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[41] Ibid., p, 391.

[42] Home As Found: Sequel to Homeward Bound. New York (Appleton), 1880, p. 361.

[43] Ibid., pp. 23-24.

demurs that "it would be downright unpopular."[44] But when Mr. Effingham insists, Bragg, like a true demagogue, takes a roundabout way of persuading the apprentices to play ball elsewhere, for he does not want to offend them, since they will be voters in a few years.

Another liberty which the public has taken with the Effingham property during the family's absence has been the appropriation of a certain point in the nearby lake as a picnic ground. When Mr. Effingham publishes a notice that the "Point" is private property and that trespassers will be prosecuted, quite a stir is created in the village. "The all-powerful, omnipotent, overruling, law-making, law-breaking public ..."[45] disputes Ned Effingham's title to the "Point," claiming that his father donated it to the town in his will.[46] Mr. Bragg, of course, takes the side of the majority and reasons with Mr. Effingham that he may as well give up his claims to the point. For

> ... it was the bias of his mind to think half-a-dozen always in the right, as opposed to one, although that one, agreeably to the great decision of the real majority of the entire community, had not only the law

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[44] Ibid., p. 181.

[45] Ibid., p. 236.

[46] Ibid., p. 237.

on his side, but all the abstract merits of the disputed question.[47]

When Mr. Bragg reminds Mr. Effingham that the property in question has been abandoned for a dozen years, Effingham replies that he did not travel with it in his pocket. He left it to the protection of the laws, which, he trusts, "... are as available to the rich as to the poor, although this is a free country."[48] He then produces his father's will, which unequivocally leaves the point to Ned Effingham and his heirs. Mr. Bragg, unable to believe that the majority could be mistaken in this matter, is utterly abashed.

Mr. Effingham's experiences in this controversy are exactly parallel to those of Cooper in establishing title to "Three Mile Point," in Lake Otsego, near Cooperstown. This tract of land had been willed by Judge Cooper to the Cooper estate but had become virtual public property during Fenimore Cooper's sojourn abroad.[49] On his return home, Cooper had to fight for legal title to the land. After he had won his legal battle, he reproduced the situation in Home As Found in order to defend his actions and voice his arguments.

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[47] Ibid., p. 186.

[48] Ibid., p. 243. In this connection see John Adams, p. 99 above.

[49] Spiller, op. cit., pp. 255-258; Ross, op.cit., p. 89.

Cooper, therefore, had practical, personal experience with the American majority. And on these personal experiences he based his protest against the *non sequiturs* drawn by Americans from the majority principle. These fallacies and Cooper's criticism of them are summed up in a passage comparing Mr. Dodge and Mr. Bragg in *Home As Found*.

> ... both these persons made a mistake which is getting to be too common in America, that of supposing the institutions of the country were all means and no end. Under this erroneous impression they saw only the machinery of the government, becoming entirely forgetful that the power which was given to the people collectively, was only so given to secure to them as perfect a liberty as possible, in their characters of individuals.[50]

Both Dodge and Bragg forget, if they ever knew, that the power of the majority to rule exists only to protect individual liberty. They make it an end in itself. They also fail to understand that the majority, in order to maintain its power, must be right, must rule according to the moral law; they forget that groups of men may act even more unjustly than individual men. One result of their ignorance is that any resistance by an individual to the popular will, even in its illegal caprices, they consider "... arrogance and aristocracy, *per se*, without at all entering into the question of the right or the

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[50] *Home As Found*, p. 255.

wrong."[51] Since their attitude is typical of the American public the result is an imperious rule of the common mind which promotes equality in all things and sets up a "respectable mediocrity"[52] as the standard of perfection.[53] These conditions in America, observed by Cooper during the three years intervening between publication of The Monikins and Home As Found, caused him to waver slightly in his belief, expressed in The Monikins, that the tyranny of the majority is not the worst possible tyranny. In Home As Found when Ned Effingham remarks to his cousin, Jack Effingham, that "Even you ... would not exchange this popular oppression for any other system under which you have lived," Jack is not quite sure. "I don't know that... I don't know that," he replies. "Of all tyranny, a vulgar tyranny is to me the most odious."[54]

Cooper likewise warns against this danger of a tyrannical public opinion in The American Democrat, also published in 1838. Here he slightly modifies his stand taken on the tyranny of the majority in The Monikins. The public in a democracy must be watched, he points

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[51] Ibid., p. 255.

[52] Ibid., p. 63.

[53] Ibid., p. 427.

[54] Ibid., p. 258.

out, just as kings and aristocrats are watched under other forms of government.[55] For power is subject to abuse by the sovereign in all forms of government, and in a government in which the people are sovereign, they can easily abuse their power.[56] Hence arises the objection that democracies promote a worse tyranny than monarchies and aristocracies -- the tyranny of the majority -- an evil that is much exaggerated by the opponents of democracy.[57] To avoid this, the American people have framed constitutions

> ... which point out the cases in which the majority shall decide, limiting their power, and bringing that they do possess within the circle of certain general and just principles.[58]

But it is only under such a constitutional government that rule by the majority is preferable to rule by a single despot. Were there no checks on the majority, were the whims of the majority carried out without regard to a permanent body of fixed law, or worse still, were public opinion substituted for law, then, indeed, "... it is probable as much injustice and oppression would follow,

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[55] The American Democrat, p. 144.

[56] Ibid., pp. viii, 182-183.

[57] Ibid., p. 50.

[58] Ibid.

as are found under the dominion of one."[59] There could be conditions then, under which the tyranny of the majority would be fully as intolerable as the tyranny of an absolute monarch. But Cooper denies in The American Democrat that they exist in America.

In the same work he explains that he does not "... adopt the popular polity because it is perfect, but because it is less imperfect than any other."[60] There is more security for most men in their individual rights, less violence and tumult under a democracy than under an aristocracy or monarchy.[61] The general level of intelligence and manners is also higher in a democracy,[62] even though the tendency in democracies is to mediocrity, "... since the tastes, knowledge and principles of the majority form the tribunal of appeal."[63] Although this tendency is bad, the rule of the majority does not "... drag all down to the level of the lowest..." rank of society, as some critics claim. Rather the lowest are raised to a "... condition not unworthy of their

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[59] Ibid., p. 45.

[60] Ibid., p. 46.

[61] Ibid., pp. 60-62.

[62] Ibid., p. 55.

[63] Ibid., p. 64.

manhood."[64] Thus Cooper could prefer democracy to any other form of government while at the same time he deplored its tendency to promote mediocrity and in Home As Found lashed the American majority for its interference in private affairs.

Another peculiar defect of democracy, the influence of demagogues, also results from the power of the majority. Cooper, like his contemporary, Kennedy, and like the earlier Federalists, considered demagogues one of the worst offspring of democracy. The reason that democracies are so fertile in producing demagogues is very simple. Since the people possess the power in a democracy, it is natural for "... the fraudulent and ambitious ... to mislead, and even corrupt the common sentiment, to attain their ends."[65] Cooper defines a demagogue as did Brackenridge in Modern Chivalry.[66] He is a hypocrite who tells the people that they are unerring and all powerful, that a majority has the power to work its will regardless of any basic law or of the rights and opinions of the minority.[67]

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[64] Ibid., p. 55.

[65] Ibid., p. 63.

[66] See p. 228 above.

[67] The American Democrat, p. 92.

> The demagogue always puts the people before the constitution and the laws, in face of the obvious truth that the people have placed the constitution and the laws before themselves.

Here Cooper, like Webster, Kent, and his other contemporaries, identifies the generation who framed the Constitution with all subsequent generations.

A demagogue flatters the people in a democracy just as a fawning courtier flatters the monarch in an autocracy. "There is a large class" of politicians in America, warns Cooper, who though scarcely meriting "... the opprobrium of being termed demagogues," nevertheless have many of the demagogic vices.[69] They are guilty of seeking their own advancement by deferring to public ignorance and prejudice and by pandering to public desires. They deceive both themselves and the people. However, Cooper expresses faith in "... the counteracting influence of reason..."[70] as a force which will seldom fail to correct this fault of democracies. If it did not, "... this defect would of itself, be sufficient to induce all discreet men to decide against this form of government."[71] Although Cooper's objection to democracy on the score that it

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[68] Ibid., p. 93.

[69] Ibid., p. 94.

[70] Ibid., p. 65.

[71] Ibid.

fosters demagogues was common to American conservatism, his position on this subject was much nearer to that of Brackenridge, was much more moderate than that of such ultra-Federalists as Adams, Ames, and Fessenden. Cooper had faith in the collective reason of the people as a check against demagogues, a faith which the Federalists utterly lacked.

Cooper modified the doctrines of American conservatism to suit his needs in other respects also. This is evident in The American Democrat as well as in the three novels which he published from 1835 through 1838. Like Webster a firm believer in the necessity of property and of social inequality for civilization and liberty, Cooper nevertheless rejected the social stake theory and denied the need for a property qualification for suffrage.[72] He did not fear that the majority in America would confiscate the property of the minority. Cooper expressed the customary faith in the efficacy of constitutions,[73] of balanced government of separated powers, and of judicial review[74] as checks on the majority. He discussed briefly

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[72]The American Democrat, pp. 130-133. He had no serious objection "to a qualification of property, if placed so low as to embrace the great majority of the people ... ." Ibid., p. 133.

[73]Ibid., p.50.

[74]Ibid., p. 25.

the political effects of unrestricted majority rule. But he was less concerned with the political aspects of the question than with the social. Most of his time and energy were spent inveighing against the extra-legal tyranny of public opinion in America--against the uniformity of mind and manners demanded by the majority, against the intolerance of social inequality and personal distinction, the setting up of a vulgar mediocrity as a standard of excellence in all things.

II

A much more detailed exposition of these social criticisms, in intensely embittered terms, appears in Cooper's Anti-rent or Littlepage trilogy, published in 1845 and 1846. In these novels Cooper reiterates his indictment of the majority for its levelling and anti-individualism, but in addition he bluntly accuses it of deliberately encroaching upon the property rights of the minority, a charge against which he defends the majority in The Monikins and which he does not bring against it even during the controversy over the "Point" in Home as Found. The differences between the public and Mr. Effingham are ended when the legal fact of his ownership of the "Point" is demonstrated. But in The Redskins,

the last novel of the Littlepage trilogy, the tenants, who compose the majority, use their political power to force the passage of unjust laws favoring themselves and discriminating against the landlords. In addition, by force of numbers they flout the laws of the land and set up a kind of extra-legal reign of terror by which they hope to intimidate the landlords, abolish rent, and gain ownership of their leaseholds for a song.

Cooper's anti-rent trilogy, composed of Satanstoe, The Chainbearer, and The Redskins, was written and published at the height of the anti-rent agitation which occurred in New York State between 1839 and 1846. The roots of this bitter struggle between tenants and landlords went far back into the colonial period of New York history, when the Dutch and English governments, in order to encourage settlement, granted patents on huge tracts of land to certain individuals. Rensselaerwyck, the estate of the Van Rensselaer's, was the largest and oldest of these, having descended intact through many generations from 1637 to 1839. As a result of this and the many other patents granted by the Dutch and English governments, thousands of acres of the best land in New York state were owned by a few

landlords.[75] The effects of this land policy were criticised as early as 1732 by Cadwallader Colden, surveyor-general of New York.[76] After the Revolution, criticism became more frequent and open. The legality of the landlord's titles was challenged as early as 1811, when petitions were presented to the legislature requesting an investigation of the Clark and Livingston titles.[77]

The tenants found many grounds for complaint in their leases, most of which were perpetual or for two or three lives (the lifetimes of two or three living persons). Rents varied between ten and fourteen bushels of wheat per annum for every hundred acres, with sometimes the additional requirement of four fat hens and a day's labor with horse and wagon. After much protest over the feudal quality of these latter provisions, they were finally commuted to a monetary payment.[78] The most

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[75]Edward P. Cheyney, The Anti-Rent Agitation in the State of New York, Publications of the University of Pennsylvania, Political Economy and Public Law Series, No. 2, Philadelphia, 1887, pp. 6-10. For all the historical facts on the anti-rent movement, I am indebted to Cheyney. Virtually the same material is to be found in a work by David Murray, "The Anti-Rent Episode in the State of New York," in the Annual Report of the American Historical Association for the Year 1896, 2 vols., Washington, 1897, I, 139-173.

[76]Cheyney, op. cit., p. 20.

[77]Ibid., p. 22.

[78]Ibid., p. 14.

distasteful and unjust provision of all to the tenants, and one of the chief causes of the anti-rent riots, was the "quarter-sale" provision. Certain clauses in the leases gave one quarter of the sale price to the landlord "... when a tenant on perpetual lease disposed of his farm... ." These clauses forcing the tenant to forfeit one fourth of his stake in the property when he sold his lease

> ... were particularly obnoxious to the tenants; and there was besides a growing feeling that they were illegal, a view justified by the subsequent decision of the courts.[79]

The long smoldering fires of dissatisfaction kindled by these provisions burst into violent flame in 1839 when the heirs of Stephen Van Rensselaer, in accordance with his will, began proceedings to collect the back rents which he had allowed to pile up for a number of years. Having mistaken Van Rensselaer's negligence for generosity, the tenants whose rents were in arrears refused to pay. When the sheriff and his assistants appeared with writs of ejectment, they were met on several occasions by hundreds of rebellious tenants and prevented from serving the writs and carrying out the ejectments. In August, 1839, the sheriff and his deputies were once detained all

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[79] Ibid., p. 15.

day by a mob and threatened with tar and feathers.[80] In December of the same year, when the sheriff returned with a posse of five hundred men to help him serve the writs, they were met at one point by fully eighteen hundred people who blocked the road.[81] At the sheriff's request, Governor Seward called out four companies of militia and part of a brigade, but the rebels occupied all the barns and buildings in the surrounding country so that the troops had no place to stay.[82] After this the disorders continued and spread to other parts of the state.[83]

Throughout the entire affair Governor Seward expressed great sympathy for the cause of the anti-renters and listened willingly to their grievances, though he acted with vigor and dispatch in putting down the mobs and enforcing the laws. In his annual message of January 7, 1840, he recommended the question for legislative consideration, saying

> Such tenures, introduced before the Revolution, are regarded as inconsistent with existing institutions, and have become odious to those who hold under them. They are unfavorable to agricultural improvement, and inconsistent with the prosperity of the districts where

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[80] Ibid., p. 28.

[81] Ibid., p. 30.

[82] Ibid., p. 34.

[83] Ibid., p. 37.

they exist, and are opposed to sound policy and the genius of our institutions.[84]

During 1840 and 1841 powerful anti-rent associations were formed, composed of tenants and their sympathizers. These groups protested to the legislature against the whole leasehold system, but especially against the unjust taxation, the laws of ejectment, the quarter-sales, and the water and mineral right restrictions in the leases.[85] The associations were held responsible for the formation of bands of "Indians," who wore masks of sheepskin and dresses of calico to conceal their identity. These disguises made the "Indians" so bold that they committed acts of violence, intimidation, and depredation which otherwise they would not have dared to venture on.[86] In 1844 bands of "Indians" several times "... assaulted the sheriff of Columbia county...," confiscated and burned his papers and eventually murdered "... two inoffensive private citizens ... ."[87] In 1845 a band of two hundred and twenty armed and disguised men met deputy-sheriff Osman N. Steele in the township of Andes, where he was serving a writ of ejectment on Moses Earle,

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[84] Ibid., p. 35.

[85] Ibid., p. 38.

[86] Ibid., p. 39.

[87] Ibid., p. 40.

a tenant of Charlotte D. Verplanck. The men shot at the horses of Steele and his assistants, killing the horses and mortally wounding Steele.[88] There were over one hundred arrests as a result of this crime and many convictions. The sentences were for various terms of years; five were for life. In 1847 Governor Young pardoned the last of the group who remained in prison.[89]

The anti-renters also organized a party, which first appeared at the polls in 1844. Supported by many sympathizers who had not taken part in the disorders or opposed the enforcement of the law, this anti-rent party exerted considerable influence in New York State politics between 1845 and 1850. Since the anti-renters did not have enough votes to elect their own candidates, they wisely decided to play balance of power politics and vote for the men who would support their measures. As a result in 1845 the legislature was sprinkled with men favorable to their cause, and in 1846 the anti-renters decided the election of judges in the third district. In 1850 they gave their votes to the Democratic candidate for lieutenant governor, who was elected, but not to the Democratic candidate for governor, who

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[88] Ibid., p. 45.

[89] Ibid., pp. 46-48.

was defeated.[90]

The result of all this agitation was a complete victory for the tenants. In 1845 the Van Rensselaers, despairing of retaining their land and collecting their back rents, offered very fair terms of sale, which were almost immediately accepted by the tenants. By 1860 nearly all the farms in the area were owned by the farmers who worked them.[91] By 1880 only twelve per cent of the farms were leased in Albany, Livingston, and Delaware counties.[92] In 1846 the anti-renters succeeded in getting several articles favorable to them included in the constitution of that year. In the same year, with the support of the governor, they achieved many of their objectives in a bill passed by the legislature.[93] In 1850 the New York Court of Appeals ruled in favor of the anti-renters in the De Peyster case, in which it declared the quarter-sales illegal.[94]

Cooper's sympathies in this affair were pre-determined. Believing that the tendency to govern by mobs and by

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[90] Ibid., p. 52.

[91] Ibid., pp. 48-49.

[92] Ibid., p. 60.

[93] Ibid., pp. 53-55.

[94] Ibid., p. 58.

public opinion instead of by legal processes was the peculiar vice of democracy[95] and considering that any violation of the sacred property rights of an individual, even by legal processes, was a grave sin on the part of the people,[96] he naturally took up the gauntlet flung down by the anti-renters and entered the lists wholeheartedly on the side of the landlords. His support of their cause was unqualified, extreme. He defended every privilege of the landlords, even the quarter-sales,[97] because of his awe for property and contracts[98] and because he believed that property[99] and a landlord class benefitted a nation.[100] "Nothing contributes so much to the civilization of a country as to dot it with a gentry ...," Cornelius Littlepage tells his son Mordaunt

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[95] The American Democrat, p. 142.

[96] Ibid., p. 129.

[97] The Redskins; or, Indian and Injin. Being the Conclusion of The Littlepage Manuscripts, New York (Appleton) 1881, p. 43. He defended the durable lease also, denying that it was opposed to "the spirit" of American institutions. Ibid., pp. 46-47, and The Chainbearer; or, The Littlepage Manuscripts, New York (Appleton), 1880, p. vi.

[98] The Redskins, p. 43.

[99] The American Democrat, p. 131.

[100] The Redskins, pp. 458-461.

in The Chainbearer.[101] In his preface to The Redskins, Cooper calls the "... notion that every husbandman is to be a free holder ... Utopian ... ;"[102] in the story itself the talk about the abolition of rents and leases is termed "twaddle."[103] Human inequalities and the structure of society would prevent such conditions from ever lasting long, even if they could be brought about.[104]

To justify his unqualified defense of the landlords and to confute the anti-renters, Cooper wrote his Littlepage trilogy, in which is presented the history of the Littlepage family estate -- its founding in 1757 and its growth to the time of the anti-rent riots. Cooper explains in the preface to Satanstoe that these novels "... do not form sequels to each other, in the sense of personal histories, or as narratives; while they do in that of principles."[105] Hence in discussing Cooper's doctrines, the entire trilogy can be treated as one work and need not be considered chronologically.

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[101] The Chainbearer, p. 470.

[102] The Redskins, xvi.

[103] Ibid., p. 458.

[104] Ibid.; and The Chainbearer, viii-ix.

[105] Satanstoe, ed. R. E. Spiller and J. D. Coppock, New York, 1937, p. 3. The title of the original edition was Satanstoe; or, The Littlepage Manuscripts. A Tale of the Colony.

The Littlepage fortune, which is so respectable at the time of the anti-rent agitation in The Redskins, had its beginning in 1757 in the land purchases of Major Littlepage, Colonel Follock, and Herman Mordaunt. These transactions are related in Satanstoe, the first of the three novels. Major Littlepage and Colonel Follock purchase forty thousand acres of land beyond Albany from the Indians. This estate, called Mooseridge, is acquired at a total cost of less than two hundred pounds, one hundred of which is paid to the governor in fees and slightly over ninety-six to the Indians in blankets, utensils, trinkets, powder, muskets, rum, and tomahawks.[106] Herman Mordaunt likewise acquires his twenty thousand acre estate of Ravensnest, located near Mooseridge, for a nominal sum, not with a view, however, to any personal profit, but solely "... to a provision for posterity."[107] In order to preserve the estate intact, Mordaunt refuses to sell any farms and has to grant long leases at very low annual rents to induce any tenants at all to settle on the estate. He explains his motives for this to Cornelius Littlepage, hero of Satanstoe:

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[106] Satanstoe, p. 48.

[107] Satanstoe, p. 297.

> ... my twenty thousand acres are not likely to be of much use to myself, even should they prove to be of any to my daughter. A century hence, indeed, my descendants may benefit from all this outlay of money and trouble; but it is not probable that either I or Anneke will ever see the principal and interest of the sums that will be expended in the way of roads, bridges, mills, and other things of that sort.[108]
>
> Every man who is at his ease in his moneyed affairs, Corny, feels a disposition to make some provision for his posterity. This estate, if kept together and in single hands, may make some descendant of mine a man of fortune. Half a century will produce a great change in this colony... .[109]

An interest in one's posterity, then is a strong motive in the acquisition of property. Since "Corny" Littlepage marries Anneke Mordaunt, the only child of Herman, his descendants benefit from Herman Mordaunt's foresight.

Satanstoe is a gripping tale of the French and Indian War. Only occasionally does Cooper advert to the rent problem or to the vulgarity and conformity of Americans. These prominent national faults are exemplified, however, in Jason Newcome, the hypocritical, guileful, grasping Yankee schoolmaster. Newcome has the same veneration for the majority, for public opinion, as Mr. Dodge and Mr. Bragg. He takes "covert satisfaction" in hot punch, cards, and pipes at Satanstoe, the

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[108] Ibid., p. 281.

[109] Ibid., p. 282. See also pp. 297-298 and The Chainbearer, p. 123.

Littlepage estate in Westchester county, but not without habitual, furtive glances over his shoulder to make certain he is not being observed by "the neighbors," to whom he has been accustomed to defer in his native Connecticut.[110] When Herman Mordaunt grants him very generous terms in a lease on a farm and mill site at Ravensnest, Corny Littlepage suspects him of trusting "... to fortune to prevent any pay-day from coming at all."[111] That this is true is shown in The Chainbearer, where Newcome's duplicity is completely exposed.

This story, the second of the trilogy, is laid immediately after the Revolution. Mordaunt Littlepage, returns home from the war and is sent almost at once by his father and Dirck Folleck to Ravensnest to act as their agent in selling the lands of the nearby Mooseridge patent. Mordaunt soon learns that the immigrants from New England are much more interested in renting farms near the settlement of Ravensnest than in buying the remote though excellent land of Mooseridge, even on the easy terms of one dollar an acre and seven dollars a

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[110] Satanstoe, p. 36. See also p. 278.

[111] Ibid., p. 298.

year interest.[112] Andries Coejemans, the Chainbearer (surveyor's helper), a worthy Dutch-American who despises the Yankees as much as Cooper himself, warns Mordaunt of the dishonest motives of the new tenants.

> ... more t'an half of t'ese people are from t'e Eastern states, where t'ere are no such t'ings as landlerts and tenants, on a large scale, you unterstant; and t'ere isn't a man among 'em all t'at isn't looking forwart to own his own farm one tay, by hook or by creek.[113]

The tavern woman at Ravensnest ingenuously betrays the greed of the tenants when she tells Mordaunt of their hopes during the Revolution that the Littlepages would turn Tory so that they could confiscate the estate of Ravensnest and thus gain ownership of their farms for nothing.

> ... some said old Herman Mordaunt had ordered in his will that you should uphold the king; and then, most of the tenants concluded they would get the lands altogether. It is a sweet thing, major, for a tenant

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[112] The Chainbearer, pp. 99, 203-204. In a footnote Cooper points out that the willingness of the immigrants to rent land "... colors the entire nature of the pretensions now set up as to the exactions of leases. No man in New York need ever have leased a farm for the want of an opportunity of purchasing, there never having been a time when land for farms in fee has not been openly on sale within the bounds of the state; and land every way as eligible as that leased." Ibid., p. 204.

[113] Ibid., p. 195.

to get his farm without paying for it, as you may judge! Some folks was desp'ate sorry when they heern tell that the Littlepages went with the colonies.[114]

Two major points bearing on the rent question -- that the tenants could have purchased land in fee and that they were greedy and sly -- are emphasized by Cooper in The Chainbearer. In addition he reiterates that there has been no profit as yet to the Littlepages from Ravensnest.[115] The story is principally concerned with the imprisonment of Mordaunt Littlepage by Aaron Thousandacres, the squatter, and with his rescue by the Chainbearer and a party from Ravensnest. Old Thousandacres and his large family have squatted on one of the best saw mill sites on the Mooseridge patent and are logging off the choicest timber in the surrounding forests. This gives Cooper an opportunity for many long-winded sermons on property rights, law, and related subjects. In The Chainbearer the exposition is much less under control than in Satanstoe and often becomes wearisome.

In The Redskins it completely dominates the plot, which is merely a flimsy frame on which Cooper hangs his social, political, and economic ideas. This final novel of the trilogy is composed largely of interminable,

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[114] Ibid., pp. 105-106.

[115] Ibid., pp. 144-145; 193.

tedious, didactic conversations. What story there is begins at the outbreak of the anti-rent riots, when Hugh Littlepage, grandson of Mordaunt Littlepage, accompanied by his Uncle Roger Littlepage, returns hurriedly to America from abroad in order to protect his properties at Ravensnest. To conceal their identity, to protect themselves from the "Injin" mobs, and to be able to observe the actions of the tenants unhindered, Hugh and his Uncle Ro disguise themselves as German peddlers before leaving New York City for Ravensnest. Both are wealthy men, since they are the principal heirs of Mordaunt Littlepage, in whom centered not only the Mordaunt and Littlepage fortunes, but also that of Dirck Follock, Cornelius Littlepage's partner in the Mooseridge patent. Uncle Ro inherited the family estates of Satanstoe and Lilacsbush near the city, and young Hugh inherited Ravensnest on the death of his father, Malbone Littlepage, and of his grandfather, Mordaunt Littlepage.[116]

The arguments introduced in Satanstoe and The Chainbearer which were so essential to Cooper's defense of the landlords are repeated in The Redskins: land is plentiful in America and therefore the tenants could have

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[116]The Redskins, pp. 19-20.

owned rather than rented their farms;[117] and men often accumulate property solely for their descendants, who should be allowed to enjoy it. Hugh Littlepage's heart is filled with emotion and legitimate pride on his return home, when he first views the old house and broad acres of Ravensnest. The house was built by his grandfather; the land went back almost a hundred years to Herman Mordaunt. He himself had been born and brought up there.

> It was natural that I should love an estate thus inherited and thus situated. NO CIVILIZED MAN, NO MAN, INDEED, SAVAGE OR NOT, HAD EVER BEEN THE OWNER OF THOSE BROAD ACRES, BUT THOSE WHO WERE OF MY OWN BLOOD. This is what few besides Americans <u>can</u> say ... .[118]

And this estate, for which Hugh's ancestors had sacrificed so much money and energy and which was at last beginning to make a profit for its owners, was to be surrendered to a group of tenants who had no claim to it at all.

> "This is an estate worth contending for, now," said my uncle, as we trotted slowly on, "although it has not hitherto been very productive to its owner. The first half-century of an American property of this sort rarely brings much to its proprietor beyond trouble and vexation."

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[117] <u>Ibid</u>., pp. 201, vii, viii.

[118] <u>Ibid</u>., pp. 142-143.

"And after that time the tenant is to have it pretty much at his own price, as a reward of his own labor."[119]

The right of property would be a farce if such principles governed its ownership.

But this is exactly what the anti-renters propose. For they argue that living on and working the land gives one a high moral claim to it -- an utterly false doctrine.[120] And since they are in a majority, they are likely to succeed in forcing Hugh Littlepage to sell his beloved ancestral acres, for the venal governor and legislature are interested in votes and will listen to majorities. This forcible sale, even if legal, would be an outrageous invasion of private rights.

... what right has the state to say any man shall sell his property, unless he wishes to sell it? A pretty sort of liberty we should have if we all held our houses and gardens under such laws as that supposes.[121]

If land belonging to an individual is needed for some public improvement such as a road or canal then of course the state has the right to take it at a fair price.

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[119] Ibid., p. 237. One of the tenants says that "the Injins mainly expect to come in cheap." They would pay fifty or sixty dollars. Ibid., p. 230.

[120] The Redskins, pp. 86, 222.

[121] Ibid., p. 137. See also pp. 53-54.

> ... but to pretend, because one side to a contract wishes to alter it, that the state has a right to interfere, on the ground that the discontented can be bought off in this way easier and cheaper than they can be made to obey the laws, is but a poor way of supporting the right. The same principle, carried out, might prove it would be easier to buy off pickpockets by compromising than to punish them.[122]

The government at Albany prefers to buy off the discontented rather than to enforce the laws because the discontented in this case are in a majority and are a convenient source of votes.

> The legislature of this state has quite lately been exhibiting one of the most pitiable sights the world has seen in my day. It has been struggling for months to find a way to get round the positive provisions of laws and constitutions, in order to make a sacrifice of the rights of a few, to secure the votes of the many.[123]

Thus the "... frothy, lumbering, useless machine, called a government, at Albany..."[124] has taken the side of the majority against the minority without considering the merits of the case. The governor and legislature have sought a means of changing the laws regulating leases so as to placate the majority. Because the landlords are few and the tenants many

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[122] Ibid.

[123] Ibid., p. 247.

[124] Ibid., p. 414.

> ... the very governor who called the militia into the field, referred the subject of the "griefs" of the tenants to the legislature, as if they were actually aggrieved citizens, when in truth it was the landlords ... who were the aggrieved parties.[125]

In suggesting a means of settling the disagreement, Cooper asserts, the governor has overstepped his authority and interfered in a matter that is not his concern but is rather that of the courts. By throwing his weight into the popular scale, he has revealed the greatest weakness of republican government -- its inability to resist unjust demands by the majority. For in a republic men so fear unpopularity "... that not one man in a million has the moral courage to resist public opinion, even when he is right."[126] In a state like New York, which is so evenly divided between two parties, politicans are especially susceptible to the sway of numbers, for under such conditions ten thousand voters can often swing an election. Thus it often happens that the "... least principled part of the voters attain an undue importance."[127] This is the case with the newly formed anti-rent party. Seneca Newcome, descendant of the vulgar scamp, Jason Newcome, brags of its growing

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[125] Ibid., p. 42.

[126] Ibid., p. 52.

[127] Ibid., p. 50.

political influence.

> Both sides are beginning to court us, and the "spirit of the institutions [sic] will shortly make themselves respected.[128]

Consequently the agitating, rioting tenants have no fear for the laws of the state. "What do two or three thousand voters care for any penal law, in a country like this?"[129] The tenants can appear armed and disguised and openly defy the law because of their numbers, but if a landlord or small group of landlords were caught so breaking the law, there would be no clemency for them. "No governor would dare pardon us," remarks Uncle Ro Littlepage bitterly.[130] Hugh Littlepage makes a similar remark after he has caught Seneca Newcome at the crime of arson in the kitchen of Ravensnest. "... Seneca was not sufficiently a gentleman... to endanger his neck." But if he had been a landlord "... caught lighting a fire on the kitchen-floor of one of his tenants, the state would not grow hemp enough for his execution... ."[131]

Because of this inequality before the law, because

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[128] Ibid., p. 112.

[129] Ibid., p. 125.

[130] Ibid., p. 130

[131] Ibid., p. 450.

the laws are not made and enforced for the rich and poor alike, with rigid impartiality, there is only a spurious democracy in New York.[132] For true democracy treats all men with equal justice. "It does not rob the poor to make the rich richer, nor the rich to favor the poor."[133] But in New York, the property of the wealthy landlord is not safe because of "the great principle" of anti-rentism, "... that the interests and wishes of numbers are to be respected, though done at a sacrifice of the clearest rights of the few."[134] This disregard of private rights is a result of the prevalent contempt for all law in America, whether man made or divine. Men act as if "... a free man were above the law. He makes the law, and why should he not break it?"[135] But whatever laws may be passed by the legislature, it is clear to Cooper that divine law, the immutable principles of justice, are on the side of the landlords. Through legislatien designed to force the sale of private property, the majority would set at nought

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[132] Ibid., p. 31.

[133] Ibid., p. xiv.

[134] Ibid., p. vi.

[135] Ibid., p. 264.

> ... the plainest principles that God has transmitted to man for the government of his conduct, and all under the extraordinary pretence of favoring liberty.[136]

Because this had occurred in America, Cooper completely rejected in The Redskins the faith in the majority which he had expressed over ten years before in The Monikins. He was no longer confident that the majority would not encroach on individual property rights and that the tyranny of the majority was less odious than that of a single despot. Cooper's modified opinions on the tyranny of the majority are expressed in The Redskins through Uncle Ro, his principal mouthpiece. Uncle Ro believes that perhaps the tyranny of the majority is the most odious of all tyrannies

> ... where there is actually tyranny, and for a very obvious reason. One tyrant is sooner satisfied than a million, and has even a greater sense of responsibility. I can easily conceive that the Czar himself, if disposed to be a tyrant, which I am far from thinking to be the case with Nicholas, might hesitate about doing that, under his undivided responsibility, which one of our majorities would do, without even being conscious of the oppression it exercised, or caring at all about it. But on the whole, we do little of the last and not in the least enough to counterbalance the immense advantages of the system.[137]

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[136] Ibid., p. v.

[137] Ibid., p. 31.

This optimistic opinion is expressed by Uncle Ro before he returns to America and sees with his own eyes the actual tyrannical rule of the majority.

The chief evidence of this tyranny is the majority's grasping after property that it has no right to. Cooper repeatedly brings this charge against the majority, both explicitly and implicitly, throughout The Redskins. If it were not for the Federal Constitution, which prohibits the passage of national and state laws

> ... impairing the obligations of contracts ... it is probable, numbers would have succeeded, long ago, in obtaining the property of the few on their own terms, amid shouts in honor of liberty.[138]

Until "... near the middle of the nineteenth century...," Cooper continues, this provision in the United States Constitution "... has proved a stubborn obstacle."[139] But now, in New York, contracts are impaired and private property invaded through the statute of descents. When a landlord holding certain types of leases dies, his tenants may convert the leases into mortgages, whether the heirs agree or not, and on payment of the debt may "... obtain the fee-simple of the estates ... ."[140]

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[138] Ibid., p. 404.

[139] Ibid.

[140] Ibid.

This law has actually passed the assembly, but not the Senate as yet, Cooper concludes in disgust.

Such open disregard of individual rights and constitutional limitations, if continued, can lead only to a state of anarchy and finally to despotism, Cooper warns. And the anti-rent movement, if it succeeds, will be the first step in America's downhill progress to this disaster.

> The good people of this state little imagine that the very evil that the enemies of the institutions have long predicted, and which their friends have as warmly repudiated, are now actively at work among us, and that the very great experiment is in imminent danger of failing, at the very moment the people are loudly exulting in its success. Let this attempt on property succeed, ever so indirectly, AND IT WILL BE FOLLOWED UP BY OTHERS, WHICH WILL AS INEVITABLY DRIVE US INTO DESPOTISM, AS A REFUGE AGAINST ANARCHY, AS EFFECT SUCCEEDS TO CAUSE.[141]

This is the purest Federalism of the Adams-Ames school. Nearly at the end of The Redskins, Cooper reemphasizes that the spirit of anti-rentism

> ... must be put down, thoroughly effectually, completely, or we are lost. Let it once be understood, in the country, that men can control their own indebtedness, and fashion contracts to suit their own purposes, by combinations and numbers, and pandemonium would soon be paradise compared to New York.[142]

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[141] The Redskins, p. 424.

[142] Ibid., p. 527.

Cooper illustrates by several incidents why this is so. One of the anti-renters in his "Injin" disguise enters the store of Orson Newcome, brother and partner of Seneca Newcome and an anti-renter himself. But Orson makes it clear by his uneasiness and coolness that the "Injin" is not at all welcome there. The reason soon becomes evident. "Injin want calico, for shirt," says the disguised rascal significantly. Orson at first pretends not to hear him, but when the demand is repeated threateningly he complies and cuts twenty yards of cloth "... with a sort of desperate submission." The "Injin" then coolly puts the bundle of cloth under his arm and departs saying, "Charge it to Down Rent."[143] This is but a sample of what the "spirit of anti-rentism" will lead to if left unchecked, warns Cooper.

He illustrates the same point in another incident which occurs after a large anti-rent meeting. Eight of the disguised "Injins" appropriate the wagon of one of the tenants who is on his way home, "... consoling him for its temporary loss by calling out, 'Injin want him -- Injin good fellow, you know.'" The shoe is now on the other foot for the unfortunate tenant. Confiscating the property of the landlord is one thing; having his own

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[143] Ibid., p. 295.

confiscated is quite another. Whether or not he knew that the Injins were good fellows, "... he looked as if he wished the Injins anywhere but in their 'happy hunting grounds.'"[144] But he should not have been surprised at this. Both he and Orson Newcome might have foreseen that something of the sort would occur. Those who foment or take part in such disorders as the anti-rent movement should expect the resultant state of anarchy to affect them too. For the rights of the tenant "... must depend on the rigid maintenance of all the rights of the landlord ...,"[145] in other words on a strict and impartial enforcement of the laws. If the laws are not enforced and obeyed, society will disintegrate.

Cooper explains that many vulgar, erroneous notions are back of this popular disrespect for law, whether for human constitutions and statutes or for the divine, immutable principles of justice. The most prevalent misconception concerning majority rule is that truth can be arrived at"by counting noses."[146] Americans seem to believe that a group can make decisions in all matters better than an individual man,[147] that "fallible parts

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[144] Ibid., p. 303.

[145] The Chainbearer, p. 203.

[146] The Chainbearer, p. 23.

[147] The Redskins, p. 76.

can make an infallible whole."[148] Cooper calls this "the great error of democracy ...,"[149] an error especially common in America, where the majority principle is part of the average man's religion.[150] Another erroneous idea often expressed is that "the majority must rule,"[151] as if the majority were to decide all questions. But if it did "the most odious tyranny"[152] ever known to man would result. For

> That principle, which kept within the limits of right, is so admirably adapted to restraining the ordinary workings of cupidity and selfishness, as they are familiarly seen in narrow governments, when permitted to overrun the boundaries placed for its control, becomes a torrent that has broken out of its icy bed, in the spring, and completely defaces all that is beneficial or lovely, in either nature or art, that may happen to lie in its course.[153]

All of these perversions of the majority principle, all of the non sequiturs drawn from it by the vulgar mass and their leaders are summed up in a harangue given by a lecturer at an anti-rent meeting in The Redskins. He

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[148] Ibid., pp. 517-518.

[149] The Chainbearer, p. 23.

[150] Ibid., p. 135.

[151] Ibid., p. 137.

[152] Ibid.

[153] The Redskins, p. 313.

holds that "one man is as good as another," that "... the majority ought to rule in all things, and that it is the duty of the minority to submit." He solves problem of minority rights by explaining that "... all the minority has to do, is to join the majority, to have things as they want 'em."[154]

Cooper exposes still another popular fallacy, the belief that the majority of the people actually control the destiny of the country. Anyone familiar with history knows that quite the contrary is true, that whenever the educated and wealthy choose to unite their money and intelligence, "... they become irresistible..." and make "... the most subservient tools of those very masses who vainly imagine <u>they</u> are the true guardians of their own liberties."[155] Cooper adds that the election of 1840 is an example of the "... power of such a combination..." of wealth and intellect.[156] But if the majority is so helpless, one might object, why was there any anti-rent movement? Why did not the educated and wealthy combine to control the majority and protect their property? And Cooper would probably reply that the landlords were too

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[154] <u>Ibid.</u>, pp. 278-279.

[155] <u>Ibid.</u>, p. vi.

[156] <u>Ibid.</u>

small a minority and in addition were an agrarian minority in a financial and industrial state.[157] He would certainly reply that the anti-rent agitators were urged on and led by a few crafty, unscrupulous leaders who were not men of superior abilities but who had enough intelligence to use the rabble for their own selfish ends. Echoing Brackenridge, Cooper points out in The Redskins that "... two thirds of every meeting are nothing but dough-faces, that are moulded to look whichever way the skilful manager may choose."[158] Although the sovereignty of the mass is a very effective check on certain abuses, in every day political practice,

> "... their imperial majesties, the sovereigns of America... have quite as little connection with the measures they are made to seem to demand, and to sustain, as the Nawab of Oude ... ."[159]

A further reason why the numerical majority does not actually govern in America is that the Constitution requires a majority of three-fourths of the states, which might be a minority of the total population, to pass amendments.

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[157] For Cooper's agrarian, anti-finance sentiments see The Redskins, p. 79.

[158] Ibid., p. 441.

[159] Ibid., p. 497.

> Nor is this all; the alteration may be carried out by only one vote in each of the twenty-three states, and, deducting these from the electors in the seven dissenting states, you might have a constitutional change made in the country against a majority of say two millions! It follows that the people, in the common meaning, are not as omnipotent as some suppose. There's something stronger than the people, after all, and that's principles ... .[160]

Throughout The Chainbearer and The Redskins, Cooper refers acidly to the demagogues who stir up the spirit of covetousness in the people.[161] Here in a new context he repeats most of the ideas on this subject expressed earlier in The American Democrat. Seneca Newcome, like every demagogue (certainly like Middleton Flam in Quodlibet and General Fairweather in Whigs and Democrats), has two sets of opinions, one for his public and one for his private life.[162] In an absolute monarchy

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[160] Ibid., p. 288. In The Chainbearer Cooper illustrates how the majority principle can be manipulated by a skillful chairman so as to make a minority of an entire group appear like a majority. Jason Newcome is moderator of a meeting of tenants at Ravensnest to decide on the denomination of the church which they are combining to build. The first vote is twenty-six Congregational, twenty-five Presbyterian, fourteen Methodist, nine Baptist, three Universal, and one Episcopal. By manipulation, elaborate democratic parliamentary procedure, and chicanery, Newcome finally gains a majority of one for the Congregational denomination. The last vote is thirty-nine Congregational and thirty-eight Presbyterian. The Chainbearer, pp. 134-140.

[161] The Redskins, p. 421.

[162] The Redskins, p. 203.

he or any other demagogue would be a cringing sycophant at the throne of his sovereign, ready to put down ruthlessly the very people whom he exalts in a democracy.[163] It is these men who by means of political parties manipulate the popular will and change America from a land of submission to law and of security of rights to a land of plunder, violence and anarchy. It is they who are really responsible for the burning of Hugh Littlepage's barn by the tenants at Ravensnest.[164] Whatever the demagogue's protestations, he is a vicious, contemptible man -- greedy, ambitious, deceitful, unprincipled. "The man who is forever preaching the rights of the poor is at bottom a rogue," Mordaunt Littlepage admonishes the tavern woman in The Chainbearer, "and means to make that cry a stalking horse for his own benefit ... ."[165] Toward the end of the story after his experiences with the duplicity and acquisitiveness of Jason Newcome, Mordaunt observes

> ... I never knew a man who made large professions of a love for the people, and of his wish to serve them on all occasions, whose aim was not to deceive them to his own advantage; and I never knew a man who was compelled to come much in contact with the people, and who at the

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[163] Ibid.

[164] Ibid., pp. 418-419.

[165] The Chainbearer, p. 104.

same time was personally popular, who had any thing in him, at the bottom.[166]

Jason Newcome is an example of the truth of both statements, according to Mordaunt (and Cooper).

Many evils result from the malign influence of demagogues. The people may ultimately surrender their sovereignty and submit to "... the arbitrary, selfish, and ever unjust dictation..." of these men.[167] Short of this, they may be led by them to attempt to govern by mobs outside the law and without the instruments of government. "What I object to," says Hugh Littlepage in The Redskins,

> is a handful of men getting together, setting themselves up as the people, pretending to authority in that capacity, and claiming a right to force their notions on other folks.[168]

Whipped up by demagogues, these bands of troublemakers are cowardly in the extreme. They excel in tyrannizing over individuals or small unarmed groups, but will flee whenever organized armed resistance, however small, is made against them.

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[166] Ibid., p. 434.

[167] Ibid., p. 292.

[168] The Redskins, p. 438.

> They are heroes when a dozen can get round a single man to tar and feather him; valiant, as a hundred against five or six, and occasionally murderers, when each victim can be destroyed by five or six bullets, to make sure of him. The very cowardice of the scoundrels should render them loathsome to the whole community; the dog that has spirit only to hunt in packs being cur at the bottom.[169]

One of the most dastardly tricks of the demagogues is to incite the envy of the majority against their betters, to inflame the latent desire of the people to lower all men to their vulgar level. The lecturer at the anti-rent meeting in The Redskins attempts to do this in his harangue to the crowd.

> Where is this Hugh Littlepage at this very moment? In Paris, squandering your hard earnings in riotous living, according to the best standards of aristocracy. He lives in the midst of abundance, dresses richly, while you and yours are eating the sweat of your brows. He is no man for a pewter spoon and two-pronged fork? [sic] No, my countrymen! He must have a gold spoon for some of his dishes, and you will find it hard to believe -- plain unpretending, republican farmers as you are, but it is not the less true -- he must have forks of silver! Fellow-citizens, Hugh Littlepage would not put his knife into his mouth, as you and I do -- for the world. It would choke him; no, he keeps silver forks to touch his anointed lips.[170]

This appeal by the lecturer, which fails because the tenants are accustomed to seeing the Littlepages live thus, is an expression of the officious, envious spirit

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[169] Ibid., p. 325. See also p. 191.

[170] Ibid., p. 275.

which Cooper deplores in Home as Found, the spirit which demands conformity to a uniform standard and which seeks to interfere illegally in personal matters that do not concern the majority. This anti-individualistic attitude of the majority is also evident in the power which the expressions "folks say"[171] and "they say"[172] have in America.

It results in the weirdest notions of what constitutes aristocracy. Like the anti-rent lecturer, the average man considers that anyone slightly superior to him in taste or personal habits is "aristocratic." Hugh Littlepage remarks

> This word "aristocratic," I find since my return home, has got to be a term of expansive signification, its meaning depending on the particular habits and opinions of the person who happens to use it. Thus, he who chews tobacco thinks it aristocratic in him who deems the practice nasty not to do the same: the man who stoops accuses him who is straight in the back of having aristocratic shoulders; and I have actually met with one individual who maintained that it was excessively aristocratic to pretend not to blow one's nose with one's fingers. It will soon be aristocratic to maintain the truth of the familiar Latin axiom of "de gustibus non disputandum est."[173]

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[171] The Redskins, p. 428.

[172] The American Democrat, p. 175.

[173] The Redskins, p. 186.

There is no more false idea, asserts Cooper, than this one about "aristocracy." To talk of "lords and aristocrats" in America is "political blarney,"[174] for none exist since political power is not held in the hands of a few.[175] If by aristocracy is meant a social group holding special political privileges, then the real aristocrats in America are not the landlords but the demagogues,[176] the newspaper editors,[177] the tenants.[178] Most people, however, mean only ladies and gentlemen when they refer to "aristocrats,"[179] and in talking thus are merely venting a grudge against anyone who differentiates himself from the mass. This is true tyranny of the majority, a misuse of the democratic principle of majority rule so as to bring about a perversion of democracy.[180] So Cooper believed

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[174] Ibid., p. 163.

[175] Ibid., p. 169.

[176] Ibid., p. 169.

[177] Ibid., p. 114.

[178] Ibid., p. 192.

[179] Ibid., pp. 91, 188.

[180] Cooper's concept of the tyranny of the majority is practically identical with that of James Bryce. "The expression 'tyranny of the majority,'" says Bryce, "is commonly used to denote any abuse by the majority of the powers which it enjoys in free countries under and through the law, and in all countries outside the law. ...A majority is tyrannical when it decides without hearing the minority, when it suppresses fair and temperate criticism on its own

and preached.

> Kept in its proper sphere, the use of majorities is replete with justice, so far as justice can be exercised among men; abused, it opens the highway to the most intolerable tyranny.[181]

The grasping of the majority for property that was not theirs, the attempt at illegal rule by little bands of men who set themselves up as the people, the meddling of the public in private affairs -- all these injustices deplored in The Redskins were the first signs of the actual tyranny of the majority which Cooper had denied in The Monikins. But Cooper was nevertheless a confirmed democrat at this time, despite his proposal in The Redskins that any town or county be disfranchised in which a public officer was prevented by a mob from executing a process.[182]

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acts, when it insists on restraining men in matters where restraint is not required by the common interest, when it forces men to contribute money to objects which they disapprove, and which the common interest does not demand. The element of tyranny lies in the wantonness of the act... It consists not in the form of the act, which may be perfectly legal, but in the spirit and temper it reveals... ." The American Commonwealth, II, Chapter LXXXV, 337.

[181] Ibid., p. 437.

[182] The Redskins, pp. 138-139; The Ways of the Hour, A Tale. New York (Appleton), 1880, pp. 22-23.

III

How the majority could tyrannize through public opinion alone, without recourse to legal processes at all, Cooper revealed in his last novel, The Ways of the Hour, published in 1850 one year before his death. In the American Democrat Cooper had written

> The pretence that the publick has a right to extend its jurisdiction beyond the reach of the laws, and without regard to the principles and restraints of the fundamental compact that binds society together, is, indeed, to verify the common accusation of the enemies of democracy, who affirm that, by substituting this form of government for that of a despotism, people are only replacing one tyrant by many. This saying is singularly false as respects the political action of our institutions, but society must advance farther, the country must collect more towns, a denser population, and possess a higher degree of general civilization, before it can be as confidently pronounced that it is untrue as respects the purely social.[183]

The tyranny of the majority treated in The Ways of the Hour is of this latter type. It is entirely social and extra-legal. Unlike The Redskins, Cooper's last novel is not concerned with property rights and the political power of the majority, but with the violation of purely personal rights by the majority through the power of public opinion. Largely because of "aristocratic" bearing and tastes, an innocent woman is convicted of murder

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[183]The American Democrat, p. 142.

through the influence of public opinion on the jury that is trying her. The possibility of such injustice had occurred to Cooper while he was writing The Redskins.

> The supremacy of numbers is so great, that scarce a private suit of magnitude is committed to a jury, without attempts, more or less direct, to influence the common mind in favor of one side or the other, in the hope that the jurors will be induced to think as the majority thinks.[184]

In his preface to The Ways of the Hour, Cooper states that his principal purpose is "... to draw the attention of the reader to some of the social evils that beset us ..."[185] but particularly to reveal the defects of trial by jury in a democracy.

> ... the institution itself, so admirable in a monarchy, is totally unsuited to a democracy. The very principle that renders it so safe where there is a great central power to resist, renders it unsafe in a state of society in which few have sufficient resolution to attempt even to resist popular impulses.[186]

In certain localities, Cooper continues, juries discriminate against railroad companies and against creditors "... who dwell at a distance."[187] And

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[184] The Redskins, p. 431.

[185] The Ways of the Hour, p. v.

[186] Ibid.

[187] Ibid., p. vi.

> In cases that are connected with the workings of political schemes and not unfrequently in those in which political men are parties to the suits, it is often found that the general prejudices or partialities of the out-door factions enter the jury-box.[188]

In the novel that follows -- a cock and bull story of the trial of a wealthy, friendless woman for murder -- Cooper illustrates the influence of these "out-door factions" on the jury in a serious criminal trial.

The Ways of The Hour is the sort of tale that justifies Mark Twain's dictum that "Cooper ... saw nearly all things as through a glass eye, darkly."[189] It is unconvincing from beginning to end. It is also slow and tedious, but a knowledge of its action is essential to a full understanding of Cooper's criticism of the tyranny of public opinion, the particular phase of majority tyranny treated in the novel.

The plot begins when Thomas Dunscomb, eminent Manhattan attorney, goes to the small town of Biberry in Duke's county, New York, to defend Mary Monson, a beautiful, mysterious young woman who is accused of the crimes of murder and arson. Accompanied by his friend

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[188] Ibid.

[189] Mark Twain, "Fenimore Cooper's Literary Offenses," In Defense of Harriet Shelley and Other Essays, New York and London, 1897, p. 66.

Dr. McBrain, who discovered the strange case and aroused his interest in it, Dunscomb arrives at Biberry just in time for the final coroner's inquest, the result of which is the indictment by the coroner's jury of Mary Monson for murder in the first degree.[190] The grounds of the indictment are circumstantial and flimsy. There has been a fire in the farmhouse of Peter Goodwin, where Mary Monson has been a boarder. Starting in the side of the house opposite her room, the fire leaves her belongings untouched but sweeps through the bedroom of Peter and Dorothy Goodwin and burns their bodies, or what is supposed to be their bodies, beyond recognition. When the fire is at its height, Mary Monson is observed making her escape through her bedroom window with the aid of two strange men, who remove her effects and one bureau used by Dorothy Goodwin and then immediately disappear. Mary is of course suspected of the crimes by the neighbors, who have long resented her aloof bearing. When her purse is examined, several gold pieces, said by the neighbors to have belonged to Dorothy Goodwin, are found in it. One large gold coin is positively identified by four neighbor women as having been kept in an old stocking with many other gold coins by Mrs. Goodwin. The

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[190] The Ways of the Hour, p. 77.

stocking, which was kept in the very bureau rescued by the strange men, is nowhere to be found. Further incriminating evidence against Mary Monson is turned up after the fire. When the charred bodies are examined, it is immediately apparent that both skulls have been fractured simultaneously by a heavy blow. The inference, therefore, is that Peter and Dorothy Goodwin were murdered in bed before the house was fired. At the coroner's inquest Dr. McBrain expresses doubt that either of the charred skeletons is that of Peter Goodwin, since both when measured are found to have female proportions. But Mary Monson is nevertheless indicted for murder.

The salient facts bearing on the case, then, are made known to the reader before the trial begins. He knows the grounds on which Mary Monson is indicted and the important part which public opinion has played in bringing about her trial. She was indicted, Cooper strongly hints, principally because of her neighbors' prejudice against her "aristocratic" ways. This prejudice proves to be the determining factor in her trial and conviction also.

Both sides recognize the important influence of public opinion on the jury long before the trial opens. "Squire" Timms, Dunscomb's associate in the case, takes immediate steps to counteract the rumors set abroad by

Williams, a local attorney retained by the relatives of the Goodwins to aid the District Attorney in the prosecution of the case. Realizing the importance of the press in moulding public opinion, Timms plants several stories favorable to Mary Monson in county papers in order to counteract the rumors set abroad by Williams.[191] The "licentious press"[192] has already irreparably injured her cause by a prejudicial account of the crime which strongly hints that her guilt is "... not only beyond a question, but of the darkest dye."[193] But Timms does not depend on the press alone to counteract this unfavorable impression. He employs "... certain confidential agents..."[194] to sound out public opinion, to interview the witnesses for the prosecution and draw out the unfavorable evidence which they have to offer. Other men in his employ called "talkers," or "little members," are paid to spread favorable rumors among the people.

These strictly confidential agents went to work with experienced discretion but great industry, and soon had some ten or fifteen fluent female friends actively

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[191] The Ways of the Hour, p. 152.

[192] Ibid., p. 87.

[193] Ibid., p. 94.

[194] Ibid., p. 150.

engaged in circulating "They says," in their respective neighbourhoods.[195]

Another device used by both defense and prosecution to influence jurors is known as "the pillowing process." Timms explains it to Dunscomb.

> Half a dozen beds are put in the same room, and two in a bed. Waal, imagine three or four jurors in one of these rooms, and two chaps along with 'em, with instructions how to talk. The conversation is the most innocent and nat'ral in the world; not a word too much or too little; but it sticks like a bur. The juror is a plain, simple-minded countryman, and swallows all that his room-mates say, and goes into the box next day in a beautiful frame of mind to listen to reason and evidence! ... give me two or three of these pillow-counsellors, and I'll undo all that the journals can do, in a single conversation. You'll remember, 'Squire, that we get the last word by this system; and if the first blow is half the battle in war, the last word is another half in the law. Oh! it's a beautiful business, is this trial by jury.[196]

Attempts of various kinds to influence the minds of the jurors are made both before and during the trial. They should not be allowed, of course, but are possible because

> ... jurors, and constables, and doorkeepers, don't like to be kept in their places; and there isn't one cause in ten, if they be of any length, in which the jurors don't stray, or the constables, don't get into the jury-rooms.[197]

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[195] Ibid., p. 153.

[196] Ibid., p. 140.

[197] Ibid., p. 326.

Such improper conduct is the result of the lawlessness of the people, brought on by their being constantly flattered by demagogues.

> ... we have been telling the people so long that they are perfect, and every man that he, in his own person, is one of these people, that our citizens don't like to submit to restraints that are disagreeable.[198]

This is the essence of America's troubles, according to Cooper. The people, who think they make the laws, object to being restrained by them. Taking advantage of the loose enforcement of the law in Duke's county, both Timms and Williams carefully place their hired agents, or "talkers," in the tavern bar in Biberry, a place where the prospective jurors congregate.

> The reader is not to suppose that these men admitted directly to themselves even, the true character of the rascally business in which they were engaged; for their employers were much too shrewd not to cover, to a certain degree, the deformity of their own acts. One set had been told that they were favouring justice, bringing down aristocratic pride to the level of the rights of the mass, demonstrating that this was a free country, by one of the very vilest procedures that ever polluted the fountains of justice at their very source. On the other hand, the agents of Timms had been persuaded that they were working in behalf of a persecuted and injured woman, who was pressed upon by the well-known avarice of the nephew of the Goodwins, and who was in danger of

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[198] Ibid.

becoming the victim of a chain of extraordinary occurrences that had thrown her into the meshes of the law.[199]

This "nephew of the Goodwins," one Jesse Davis, is the man who has retained Williams as assistant attorney in the prosecution of the case, not because he desires revenge, or even because he believes Mary Monson guilty, but because he is avaricious. He hopes to extort five thousand dollars from Mary Monson in return for withdrawing his support from the prosecution, for without Williams and the witnesses Williams has assembled the state cannot win its case. The proposition, made by Williams through Timms, is scornfully rejected by Mary Monson, who could easily raise the money but is confident of being acquitted and too proud to buy off her persecutors.

This virtual blackmail of Mary Monson is made possible by the hostility of the local majority to Mary Monson's individuality. From the first the women of the village and neighboring farms have resented her cultured manner, her quiet dignity, her failure to meet them on their own level. They have wondered why such an accomplished, beautiful, and apparently wealthy young woman should live in the garret of an obscure farmhouse. And their resentment has been aggravated because their

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[199] Ibid., pp. 316-317.

curiosity has been left unsatisfied. Mary Monson's conduct after her indictment increases the rancor against her so-called aristocratic ways. She stands strictly on her rights as a prisoner, setting a high value on her privacy. Instead of placating the multitude, she antagonizes them. She will not show herself at the jail window to be a spectacle for curious eyes.[200] She refuses to admit anyone but her attorneys to her cell, politely declining to interview the local Baptist and Methodist ministers who offer their services.[201] In addition she hires a Swiss maid, with whom she speaks French and German fluently, she reads books in several languages, and she plays on the harp and piano. The maid and musical instruments are too much for the people of Biberry. Mrs. Gott, the sheriff's wife and jail keeper, who is entirely sympathetic towards Mary Monson, sums up the unfavorable impression they have made when she expresses a wish that her prisoner "... had less music and less money just now; for they are doing her no great good in Biberry."[202] She explains her meaning to John Wilmeter, nephew of Dunscomb and an

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[200] Ibid., p. 160.

[201] Ibid., p. 161.

[202] Ibid., p. 158.

assistant attorney for the defense.

> Most people think Mary Monson guilty, and a few do not. Those that think her guilty say it is insolent in her to be singing and playing in the very gaol in which she is confined; and talk loud against her for that very reason.[203]

The people also object to the foreign tongues. Michael Millington, friend of John Wilmeter, foresees that they will be "...sufficient to hang her..." because of the majority's intolerance of superiority to the dead level of mediocrity which it sets as a standard. Had Mrs. Goodwin murdered Mary Monson, says Millington, she could easily have obtained mercy, but

> There is no hope for one who bears about her person, in air, manner, speech, and deportment, the unequivocal signs of a lady. Our sympathies are all kept for those who are less set apart from the common herd. Sympathy goes by majorities, as well as other matters.[204]

There is no equality before the law in America.

Cooper makes this evident at the trial, when Williams makes the most of public prejudice against Mary Monson by referring to her musical instruments, to her maid, and to her use of foreign languages. He aims his

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[203] Ibid., p. 159.

[204] Ibid., p. 105.

remarks at the entire audience but in particular at the supporters he has carefully placed here and there, as so many lawyers do, explains Cooper. The duty of these planted spectators is "... to grin, and snear, and look knowing..."[205] at the hits of Williams and the prosecuting atterney. By so doing they set an example for the others present, who follow along like sheep. Thus public opinion is further crystallized, and the case is decided not on its merits but on the basis of irrelevant details which appeal to the majority.

Throughout the trial is felt the sinister influence of forces at work behind the actual proceedings. During the process of selecting the jury, Timms and Williams spar cautiously with each other, each trying to seat jurors favorable to his own side and to prevent the seating of those unfavorable. Since neither lawyer can be sure whether one of his own "talkers" or one of the opposition has last had the ear of a juror, the sparring is carried on almost entirely in the dark. But a jury is finally seated. The judge likewise is subject to the influence of public opinion, for he is elected, not appointed, to office and must come "... before the people, in the next autumn, as a candidate for

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[205] Ibid., p. 288.

reelection."[206] Consequently Timms and Williams do not respect his admonitions as they should. The judge is especially discreet in his reproval of Williams,[207] whom he knows to have "... half a dozen presses at his command ..." capable of ruining his chances for reelection.[208] Cooper uses the judge's timidity as an example of the ill effects of allowing the people to elect such important magistrates. In The Ways of the Hour he presents many arguments against popular election of judges. Their dependence on votes to remain in office makes them subject to public opinion,[209] or they will be influenced in their judgments by party politics, since many of them will get in office through the support of political parties.[210] Worst of all, popular election of judges will result in the selection of men of inferior ability.[211] It is not necessary for popular liberty that the people elect the judges,[212] or even the sheriffs and district attorneys.

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[206] Ibid., p. 290.

[207] Ibid., p. 468.

[208] Ibid., p. 287.

[209] Ibid., pp. 23; 285.

[210] Ibid., p. 86.

[211] Ibid., p. 85.

[212] Ibid., p. 86.

All such officers should be appointed in order that they be removed from the influence of the people. For under existing conditions, argues Cooper, neither the law nor the officers of the law are properly respected.[213] Furthermore, popular influence on judges and district attorneys may cause serious injustice, as was almost the case at the trial of Mary Monson.

The decision of the jury in a trial in which such prejudices are exploited is predetermined. Mary Monson is found guilty of murder in the first degree. The "aristocracy" of the prisoner plays an important part in her conviction, perhaps the determining part, since the evidence against her is so weak. The prosecution rests its case almost entirely on the finding of the gold coins in Mary Monson's purse. Its principal witness, one Sarah Burton, positively identifies one of these coins by a notch in it and by the markings on its face. She saw and handled it many times in the company of Dorothy Goodwin, she tells the jury, for Mrs. Goodwin took pleasure in showing her small hoard to her neighbors. Mary Monson replies in her testimony that she too knew the coin, since it once belonged to her before she gave it to Dorothy Goodwin as a present, along with several other gold pieces. She adds that she also had an

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[213] Ibid., pp. 161-162; 280.

identical, perfect coin without any marks on it, which she kept for herself. But since she cannot produce the perfect coin or explain how the notched coin got into her bag, the evidence is entirely against her, and she is convicted. But not before Dr. McBrain expresses his opinion that both the charred skeletons are those of females, and the defense draws the inference that in this case Mary Monson could not have been guilty of murdering Peter Goodwin and suggests that some effort be made to locate him.

But this proves to be unnecessary. Just as Mary Monson is being sentenced to be hanged, Peter Goodwin walks into the court room like a deus ex machina. The effect on the crowd is electric; the judge and District Attorney, and Dunscomb also, are indignant at the deception that has been practised on them. But in spite of this exoneration of Mary Monson of one murder, a new trial is immediately begun in which she is accused of the murder of Dorothy Goodwin. In this retrial, Sarah Burton is again the principal witness for the prosecution. At this time, in an unnatural and unconvincing scene, Mary Monson cross-questions her and forces her to confess that she took the stocking containing the gold coins from Dorothy Goodwin's bureau after it had been removed from the house, that she exchanged the notched coin for the perfect coin which was in Mary Monson's purse, and

that she still has the stocking and gold coins in her possession. The farcical trial ends immediately of course. The fire is eventually shown to have been accidental. The second skeleton found in the bed with Dorothy Goodwin is assumed to have been that of a German woman who was living in the house at the time. The blow on the skulls was from a heavy plowshare which fell on the two women from the attic above when the floor burned through.

Mary Monson's part in the strange affair -- her unwillingness to establish her true identity, her failure to disclose important evidence bearing on the case -- is explained by the disclosure of a fact that Cooper hints at several times earlier in the story; Mary Monson is slightly insane. Her true identity, long suspected by Dunscomb, is finally established; she is Mildred Millington de Larochefort, heiress to the immense Millington fortune. Born in America, brought up and educated in Europe, she was married too young to a French nobleman, one M. de Larochefort, who is much older than she. It was to escape from him that she took lodgings with the Goodwins and maintained her incognito.

The implications of this story are many. The most obvious is that the average man is incompetent to act as a juror. The jury in the case is influenced by prejudice,

public opinion, gossip. The uncertain members are carried along in making their decisions by "... a friend and political confidant of Williams,"[214] who is himself unconscious of the extent of his wrong doing but whose mind has been poisoned by "the serpent-like reports" set abroad by the "talkers" for the prosecution. As Mary Monson says after her conviction, "Men should have minds superior to mere reports, to sit in that box."[215] This trial is but one example of the strange decisions made by juries, decisions which are often contrary to the opinions of spectators and even to those of the judges themselves. Cooper explains this partially by the weakened influence of judges over the minds of jurors, a loss of influence which results from several causes.

> The tendency of the times is to make men confident in their own judgments, and to defer less than formerly to knowledge and experience. Seeing this very general trait, the judges themselves defer to the tendency, manifest less confidence in their station and knowledge and perhaps really feel it; while the unceasing cry of the infallibility of the common mind, induces the vulgar, or average intellect, to shrink from any collision with that which wears the semblance, even though simulated, of the popular will. In this way is the institution of the jury gradually getting to be perverted, rendering that which is safe as an human tribunal can well be,

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[214] Ibid., p. 457.

[215] Ibid., p. 461.

when under the guidance of the court, as dangerous as ignorance, party, self-will and obstinacy can well make it.[216]

A second important implication of the story is that liberty and good government are seriously endangered in America because "... majorities are the primum mobile of the common mind."[217] In the United States ultimate power rests in the hands of such people as the jurors, the Burtons, Jesse Davis, Williams, and the village gossips. The results are many and disastrous: incompetent office-seekers are placed in important positions; intimidated by threats of defeat at the next election, they are sometimes not absolutely impartial in administering the laws, or worse, they even listen to the illegal instructions of the majority; since the majority holds the necessary power, it is able to indulge its appetite for change by meddling unnecessarily and ignorantly with fundamental laws;[218] actual injustice results from referring every question to the majority for decision.[219]

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[216] Ibid., p. 458.

[217] Ibid., p. 64.

[218] Ibid., pp. vii-viii; 85.

[219] Ibid., p. 84.

The principal injustice resulting from this over-emphasis on majority rule is brought out in the third implication which Cooper makes in The Ways of the Hour: individuals do not receive equal treatment before the law in America. There is no freedom here for an individual to be peculiar, distinctive, superior to the mass. The law is not applied to rich and poor alike. Cooper harps on this point in The Redskins. He repeats it many times in The Ways of the Hour and in a bitter passage sums up the inconsistency and injustice of American legal policy. An innocent woman, unjustly condemned to death, has been saved only by a virtual miracle, but the perjured Mrs. Burton, who is responsible for the whole affair, is allowed to go free.

> ... nothing has ever been done with Sarah Burton. She is clearly guilty; but the law, in these times of progress, disdains to pursue the guilty. Their crimes are known; and of what use can it be to expose those whom every one can see are offenders! No; it is the innocent who have most reason to dread the law. They can be put to trouble, cost, vexation and loss, if they cannot be exactly condemned.[220]

The anti-individualism which is so rife in America is possible because of the rule of the majority by illegal means. As Timms says,

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[220] Ibid., pp. 480-481; 21.

> Things are changed in Amerika ... .The people are beginning to govern; and when they can't do it legally, they do it without law.[221]

To achieve its ends, the majority disregards both constitutional and statute law, which have been established to protect the rights of individuals. In the trial of Mary Monson the majority does not even observe those "... great principles ... founded on natural justice ..." which Cooper was so confident in The Monikins would seldom if ever fail to influence public acts.[222] Such practices are, of course, tyrannical. The Ways of the Hour, then, like The Redskins, is one detailed illustration of what the tyranny of the majority means.

IV

Throughout all of Cooper's criticisms of the majority principle run three fundamental nineteenth century American ideas --- the sanctity and value of the individual, the belief in an absolute, universal moral law, and the inviolability of property. Closely interdependent and interrelated, they are woven together to

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[221] Ibid., p. 138.

[222] The Monikins, p. 425.

form the warp and woof of Cooper's democratic creed.[223] All of his criticisms of the American majority can be considered under one or the other of these three headings.

Perhaps the most important idea of the three in Cooper's political and social thought is that of the sanctity of the individual. It is closely related to the idea of the higher moral law, however. For Cooper derives individual rights from the divine law, to which he refers so frequently. And whenever he brings in the higher moral law, or its political counterpart, the Constitution, it is in relation to individual rights, which are guaranteed and regulated by the divine law and by the Constitution. Human constitutions guarantee individual rights because it is the end of government to do so. "Individuality is the aim of political liberty," Cooper said in The American Democrat.[224] And he accused the American majority of making democracy a farce by violating individual rights, both of person and property,

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[223]According to Ralph Henry Gabriel, the belief in the higher moral law and in the rights of the "free individual" is basic to American democratic thought of the period. The Course of American Democratic Thought, pp. 14-15; 19. From the idea of "cosmic constitutionalism," or divine law, was derived the American faith in constitutions and judicial review.

[224]The American Democrat, p. 174.

and by confusing the ends and means of free government.

Cooper's criticisms of the majority reveal a concern for the rights of property similar to that expressed by Webster, Story, Kent, Marshall, Leigh, Upshur, and the other conservatives. Cooper did not make the protection of property the chief object of government, as they did; one could have a stake in society without owning any property. And Cooper never advocated a property qualification for suffrage. But in other respects he was like his conservative contemporaries. He had exactly the same concept of property as they; to Cooper private property was sacred, inviolable. A right once vested was eternally fixed, a contract once made irrevocable. This was the doctrine of Marshall and Kent. It did not matter to Cooper that the landlords had acquired their property from a corrupt government at a ridiculously low price, or that they had never improved or worked it, or that the private ownership of such vast tracts of land was undemocratic and inimical to the prosperity of the state. The property was held in fee simple according to law, and the majority had no right to touch it without the owner's consent. That settled the matter.

Cooper's criticism of the majority principle as it was applied in his day, therefore, reflects an economic

clash that vexed New York state in the forties. And though he had no direct personal, economic interest in the struggle, he took the side of the landlords. Many of the arguments which he presented in doing so have a strongly Federalistic flavor; they seem to have been derived from men like Ames and Adams who actually feared that they would be plundered of their property by the rabble. The economic element in Cooper's criticism of the majority is prominent, but not perhaps so prominent as the cultural. His concept of the "tyranny of the majority" was much broader, much more truly democratic than that of the Federalists. He disliked being governed by the ignorant, vulgar mass. He objected even more strenuously to the illegal intrusion of the majority into individual affairs that were not of public concern, to its attempt to bring every one down to the same level. The majority, Cooper felt, was destroying the beauty of American life, and he raised his voice in sincere and at times very cogent protest against such a perversion of democracy.

CHAPTER VIII

TRANSCENDENTALIST AND CATHOLIC: TWO ANTITHETICAL ATTITUDES TOWARD THE MAJORITY PRINCIPLE

The central article of Cooper's political creed, the sanctity of the individual, was also the focal point of the philosophical, quasi-religious criticism of majority rule made by Emerson and Thoreau, the foremost American transcendentalists. The most frequently quoted passages from their essays on individual rights fit neatly into the nineteenth century pattern of ideas about the majority principle. Like Cooper, Emerson deplored the tyranny of public opinion that was so rampant in America. To him conformity was the cardinal vice which destroyed manhood and self-reliance; it was a tribute demanded by society and cravenly paid by the average man kneeling in abject fear before the throne of the despot, the public.

> Society everywhere is in conspiracy against the manhood of every one of its members. Society is a joint-stock company, in which the members agree, for the better securing of his bread to each shareholder, to surrender the liberty and culture of the eater. The virtue in most request is conformity. Self-reliance is

its aversion. It loves not realities and creators, but names and customs.[1]

Therefore, "whoso would be a man, must be a nonconformist," Emerson preached. "Nothing is at last sacred but the integrity of your own mind."[2] We must direct our lives by our own conscience, not by what people think. To live strictly by this rule is to be great. "It is harder because you will always find those who think they know what is your duty better than you know it."[3] The greatest danger to manhood and independence is the disapproval of the multitude, which is

> more formidable than that of the senate and the college. It is easy enough for a man who knows the world to brook the rage of the cultivated classes. Their rage is decorous and prudent, for they are timid, as being very vulnerable themselves. But when to their feminine rage the indignation of the people is added, when the ignorant and the poor are aroused, when the unintelligent brute force that lies at the bottom of society is made to growl and mow, it needs the habit of magnitude and religion to treat it godlike as a trifle of no concernment.[4]

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[1]"Self-Reliance," The Complete Works of Ralph Waldo Emerson, with a Biographical Introduction and Notes, ed. E. W. Emerson, 12 vols., Boston and New York, 1876, 1903, II, 49-50.

[2]Ibid., p. 50.

[3]Ibid., p. 53.

[4]Ibid., p. 56.

There is at least an echo of the Federalist-Whig distrust of the rabble here. But Emerson proposed entirely different remedies from those of the Whigs and worked from entirely different philosophical premises.

The foundation of Emerson's doctrine of self-reliance, of his deprecation of conformity to public opinion was his belief in "... the divine sufficiency of the individual."[5] Each human soul has direct access, he believed, to divine sources of truth and justice. For "we lie in the lap of immense intelligence, which makes us receivers of its truth and organs of its activities."[6] This is the ultimate spiritual reality, "the eternal one,"[7] of which all nature, ourselves included, is the outward manifestation. It is "the Supreme Critic on the errors of the past and the present ... that Unity, that Over-Soul, within which every man's particular being is contained and made one with all other. ..."[8] Man is a part, an aspect of God; he must learn "... that the Highest dwells with him; that the sources of nature are

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[5]V. L. Parrington, Main Currents in American Thought, II, 390.

[6]"Self-Reliance," Works, II, 64.

[7]"The Over-Soul," Works, II, 269.

[8]Ibid., p. 268.

in his own mind."[9] He must therefore follow only the dictates of his soul, of this Divinity that is within him, never the dictates of the majority as announced through public opinion or through the government. To be at one with Divinity, man need only "... allow a passage to its beams."[10] This occurs during moments of mystic exaltation.

> Every man discriminates between the voluntary acts of his mind and his involuntary perceptions, and knows that to his involuntary perceptions a perfect faith is due.[11]

Thus, in a mystic experience, the human soul apprehends its own higher law immediately by intuition. It needs no religious traditions, no majority opinion, no government to help it distinguish truth from falsehood, right from wrong.[12]

Believing this, Emerson consequently disapproved of the surrender of even a jot of independence by individuals for the purpose of collective action. It was

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[9] "The Over-Soul," Works, II, 294.

[10] "Self-Reliance," Works, II, 64.

[11] Ibid., p. 65.

[12] "What have I to do with the sacredness of traditions, if I live wholly from within?" "Self-Reliance," Works, II, 50.

wrong, he felt, for anyone to try to direct the actions of others.

> This undertaking for another is the blunder which stands in colossal ugliness in the governments of the world. It is the same thing in numbers, as in a pair, only not quite so intelligible. I can see well enough a great difference between my setting myself down to a self-control, and my going to make somebody else act after my views; but when a quarter of the human race assume to tell me what I must do, I may be too much disturbed by the circumstances to see so clearly the absurdity of their command. Therefore all public ends look vague and quixotic beside private ones. For any laws but those which men make for themselves are laughable.[13]

"Hence," Emerson concluded, "the less government we have the better." His "antidote" to the abuse of the power of government was "... the influence of private character, the growth of the Individual."[14] For he believed "the root and seed of democracy" to be "... the doctrine, Judge for yourself. Reverence thyself."[15] He based his belief in democracy on trust in the divine whisperings of the Over-Soul in the individual heart.

> Democracy, Freedom has its root in the sacred truth that every man hath in him the divine Reason, or

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[13]"Politics," Works, III, 214.

[14]Ibid.

[15]Journals of Ralph Waldo Emerson with annotations, ed. E. W. Emerson and W. E. Forbes, 10 vols., Boston and New York, 1909-1914, III, 369.

that, though few men since the creation of the world live according to the dictates of Reason, yet all men are created capable of so doing.[16]

Emerson distrusted the rule of the majority, then, because he believed that most men are not governed by the Divine Reason; if they were, civil governments would be unnecessary. Individual action would suffice. Consequently, he feared political leaders, who "... reap the rewards of the docility and zeal of the masses which they direct."[17] For the majority which they lead is always composed of the young and foolish who

> ... believe their own newspapers, as their fathers did at their age. With such an ignorant and deceivable majority, States would soon run to ruin, but that there are limitations beyond which the folly and ambition of governors cannot go.[18]

In Emerson's opinion, Jackson and the popular hordes he led were typical of these unscrupulous political leaders and of this ignorant majority. If Jackson is elected, he wrote in his journal, "we shall all feel dirty."[19]

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[16] Journals, III, 390.

[17] "Politics," Works, III, 209.

[18] Ibid., p. 204.

[19] Quoted by Stuart P. Sherman, Essays and Poems of Emerson, New York, 1921, xxxii.

His remedy for an undue love for life would be to attend a Jacksonian caucus.

> I doubt not the unmixed malignity, the withering selfishness, the impudent vulgarity, that mark those meetings would speedily cure me of my appetite for longevity.[20]

Jacksonian Democracy, therefore, was inimical to the freedom of the individual. He who wished to live unto himself alone should beware of such mass movements and of the conformity which they demand.

Although Emerson disliked the Democratic politicians and considered that the Whig party contained "the best men," he never doubted that the Democrats had "the best cause."[21] He was in complete sympathy with their economic and political aims. But he could not "... accept the persons whom the so-called popular party propose ... as representatives of these liberalities."[22] These remarks indicate Emerson's distrust of the people and of the people's leaders, and they also suggest his disapproval of the doctrines of the Whigs. He could not

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[20]Sherman, op. cit., xxxii. I have been unable to find either of these passages in Emerson's Journals.

[21]"Politics," Works, III, 209.

[22]Ibid., p. 210.

abide their bourgeois, commercial philosophy; it was too materialistic. He had no patience with the social stake principle of such Whig leaders as Webster. America had already discarded it as unjust and undemocratic because it would allow

> ... the rich to encroach on the poor, and to keep them poor; but mainly because there is an instinctive sense, however obscure and yet inarticulate, that the whole constitution of property, on its present tenures, is injurious, and its influence on persons deteriorating and degrading; that truly the only interest for the consideration of the State is persons; that the highest end of government is the culture of men; and that if men can be educated, the institutions will share their improvement and the moral sentiment will write the law of the land.[23]

Men need not worry about their property rights and certainly not about their personal rights, for the law of nature requires that both persons and property be protected and exert their influence. "They exert their power, as steadily as matter its attraction."[24] No man-made law is essential to their protection and no law need be retained for this purpose when it is once shown to be outmoded. Emerson strongly disapproved of legalism, of servile obedience to the statutes of our ancestors.

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[23]"Politics," Works, III, 204.

[24]Ibid., p. 205.

"... every law and usage was a man's expedient to meet a particular case ... they are all imitable, all alterable; we may make as good, we may make better. ..."[25] Thus Emerson smashed another conservative icon--the constitution, rejected the one remaining check on the power of the majority--constitutionalism, and ranged himself on the side of Paine and Jefferson in favor of legislation by and for the living.

Although Emerson conceived the purpose of government to be "the culture of man," not the protection of vested rights in property, although he believed that laws were made by the people to promote the happiness of the greatest number and were therefore alterable by the people, he distrusted government by the majority. He regretted the necessity of coercion even by a government of the people. Such a policy was an admission of defeat and futility, a libel against human nature.

> We live in a very low state of the world, and pay unwilling tribute to governments founded on force. There is not, among the most religious and instructed men of the most religious and civil nations, a reliance on the moral sentiment and a sufficient belief in the unity of things, to persuade them that society can be maintained without artificial restraints, as well as the solar system; or that the private citizen might be

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25"Politics," Works, III, 199.

reasonable and a good neighbor, without the hint of a jail or a confiscation.[26]

Emerson lamented that no one had yet attempted to renovate the State "... on the principle of right and love."[27] He longed for the day when coercive government would be a vestige of the past, when all men would follow the divine light within them, would recognize the Godliness of their common humanity. In the meantime individual men should follow the moral promptings of their innermost being, even to the length of defying the government if necessary. "I do not call to mind a single human being who has steadily denied the authority of the laws, on the simple ground of his own moral nature,"[28] Emerson said with regret. The individual was above the mass and the government of the mass, in his opinion.

This was also the central thesis of Emerson's great disciple, Henry David Thoreau, a man who did not fear to deny the authority of the law "on the simple ground of his own moral nature." A "yankee transcendentalist turned philosophical anarchist,"[29] Thoreau urged dis-

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[26]"Politics," Works, III, 220-221.

[27]Ibid., p. 221.

[28]Ibid.

[29]Parrington, op. cit., II, 409.

obedience of the laws of the majority even more explicitly and vehemently than Emerson, and on the same philosophical grounds. His anarchism was "... no more than transcendental individualism translated into politics, with all comfortable compromises swept away."[30] Like Emerson, Thoreau urged that men listen to their conscience, the divine voice within them, and when its dictates oppose those of the majority, that they defy the majority. "... I say, break the law."[31] He could not wait for the slow, uncertain processes of government to take effect and remedy existing evils. "They take too much time, and a man's life will be gone. I have other affairs to attend to."[32] Thoreau preferred that men act directly on the promptings of their conscience. They should transgress unjust laws at once, not wait "... until they have persuaded the majority to alter them."[33] He advised the abolitionists to withdraw all support immediately from

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[30]Parrington, op. cit., II, 409.

[31]"Civil Disobedience," The Writings of Henry David Thoreau with Bibliographical Introductions and Full Indexes, 10 vols., Boston and New York, 1894, X, 146.

[32]Ibid.

[33]Ibid., pp. 144-145.

the government of Massachusetts, which was cooperating with the Federal Government and the Southern states in preserving the institution of slavery by enforcing the Fugitive Slave Act. They should not

> ... wait till they constitute a majority of one, before they suffer the right to prevail through them. I think that it is enough if they have God on their side, without waiting for that other one. Moreover, any man more right than his neighbors constitutes a majority of one already.[34]

Far from being obligated to submit to the will of the majority, the minority should resist the majority openly and effectively when a moral principle is involved.

> A minority is powerless while it conforms to the majority; it is not even a minority then; but it is irresistible when it clogs by its whole weight. If the alternative is to keep all just men in prison, or give up war and slavery, the State will not hesitate which to choose.[35]

Thus did Thoreau deny the majority principle and assert the principles of anarchy. The majority principle, he believed, was valueless as a device for achieving unity of action in a democracy. It was vain to expect voting to cure the evils of the world, for it was merely

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[34]"Civil Disobedience," Writings, X, 147.

[35]Ibid., p. 149.

an unmanly device for avoiding responsibility and salving consciences. In voting a man staked his character no more than in playing checkers.

> Even voting for the right is doing nothing for it. A wise man will not leave the right to the mercy of chance, nor wish it to prevail through the power of the majority. There is but little virtue in the action of masses of men. When the majority shall at length vote for the abolition of slavery, it will be because they are indifferent to slavery, or because there is but little slavery left to be abolished by their vote. They will then be the only slaves. Only his vote can hasten the abolition of slavery who asserts his own freedom by his vote.[36]

Further reasons why Thoreau opposed the majority principle were that it was purely quantitative and that it was based on force.

> After all, the practical reason why, when the power is once in the hands of the people, a majority are permitted, and for a long period continue, to rule is not because they are most likely to be in the right, nor because this seems fairest to the minority, but because they are physically the strongest. But a government, in which the majority rule in all cases cannot be based on justice, even as far as men understand it. Can there not be a government in which majorities do not virtually decide right and wrong, but conscience?--in which majorities decide only those questions to which the rule of expediency is applicable?[37]

Apparently Thoreau was willing to consent to rule by the

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[36]"Civil Disobedience," Writings, X, 140.

[37]Ibid., p. 133.

majority in some cases, those of "expediency," but he did not make clear just what "the rule of expediency" is or to what it applies. He refused to pay his poll tax,[38] and even a school tax, though not a highway tax.[39] Thus his position is slightly ambiguous. To refuse to pay taxes is to deny the government any effective authority, even in matters of "expediency."

Thoreau opposed the authority of the state on the same grounds that he opposed the rule of the majority--its resort to force. In his disapproval of force he was like Emerson, but more extreme.

> ... the State never intentionally confronts a man's sense, intellectual or moral, but only his body, his senses. It is not armed with superior wit or honesty, but with superior physical strength. I was not born to be forced. I will breathe after my own fashion.[40]

Thoreau had no respect for the government of the United States. He considered it a mere tradition trying to perpetuate itself, but steadily losing some of its integrity. It had no real vital force in itself, no authority which it did not derive from individuals. Of itself it

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[38]"Civil Disobedience," Writings, X, 154.

[39]Ibid., p. 161. See also pp. 147, 150.

[40]Ibid., p. 156.

could do nothing and had done nothing. It had not settled the west; individual men, the source of all governmental power had done that. And they would have done more had not the government too often hindered them.

> For government is an expedient by which men would fain succeed in letting one another alone; and, as has been said, when it is most expedient, the governed are most let alone by it.[41]

Like Emerson, then, Thoreau believed that "the less government the better." Also like Emerson he envisioned a day when states would recognize the divine goodness of human nature, when formal governments would dissolve as men followed only the voice of their conscience.

> Is a democracy, such as we know it, the last improvement possible in government? There will never be a really free and enlightened State until the State comes to recognize the individual as a higher and independent power, from which all its own power and authority are derived, and treats him accordingly. I please myself with imagining a State at last which can afford to be just to all men, and to treat the individual with respect as a neighbor. ...[42]

Such a "State" would not be a political state at all, but

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[41] "Civil Disobedience," Writings, X, 132-133.

[42] Ibid., pp. 169-170.

an anarchistic Utopia. Thoreau could believe in the possibility of such a mode of life because of his unwavering faith in the goodness of human nature and because he believed with Godwin that government was the cause of all the evils which human beings bring upon each other.[43]

Emerson and Thoreau, then, opposed the rule of the majority on the same grounds--that it turned men away from the fountainhead of goodness and truth that lay within themselves and forced them to conform to external and alien laws. Men must follow the higher law dictated by conscience, not the law of the majority. When the two laws conflict, there can be but one course of action: obey your conscience and defy the majority. This was carrying the nineteenth century American dogma of individualism to its farthest possible extreme, but the individualism of Emerson and Thoreau was at the opposite pole from the economic individualism of Webster and Kent. For they held that coercive government by the propertied few was an even more loathsome abomination than coercive government by the majority.

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[43]Parrington, op. cit., II, 409-410.

II

An equally severe critic of the American version of majority rule, but on quite different grounds from Emerson and Thoreau, was Orestes Brownson. A Catholic convert, Brownson had no faith in the goodness of natural, fallen man or in his ability to attain to heights of transcendental truth by intuition. Believing in objective truth, discursive reason, and the necessity of a special, historic, divine revelation, Brownson naturally stressed the doctrine of the universal moral law rather than that of the free individual in his criticisms of majority rule as a principle of government. He differed radically from Emerson and Thoreau in his view of the source of the moral law. Brownson believed that it must be taught by an external authority; Emerson and Thoreau insisted that the individual could and must be allowed to discover it intuitively.

It was to be expected that Orestes Brownson should comment on such a crucial democratic problem as the functioning of the majority principle. A dynamic, voluble, and at times prolix polemicist, he touched on nearly all of the important issues of his day in the course of his long career as a magazine writer and

editor. In his long quest for truth and spiritual peace, Brownson dabbled at one time or another in most of the religious, philosophical, and politico-economic movements of the age in which he lived. Before he finally found rest in the arms of Holy Mother Church, Brownson was successively a Congregationalist, a Presbyterian, a Universalist, an agnostic, a Unitarian minister, and again an orthodox Protestant, this time with Catholic leanings.[44]

His political and economic theories fluctuated between as wide extremes as his religious faith. In 1829 and 1830 he was an agnostic socialist of the Fanny Wright-Robert Owen school, seeking to de-Christianize America and banish God from the schoolroom.[45] From 1837 to 1840 he preached the abolition of the inheritance of property as a necessary means of establishing social equality among men.[46] After 1840, however, he became

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[44]Arthur M. Schlesinger, Jr., Orestes A. Brownson, A Pilgrim's Progress, Boston, 1939, pp. 5-179. See also R. H. Gabriel, op. cit., p. 56.

[45]Gabriel, op. cit., p. 56; Schlesinger, op. cit., pp. 26-27.

[46]Helen S. Mims, "Early American Democratic Theory and Orestes Brownson," Science and Society, III, No. 2 (Spring, 1939), pp. 184-191; Schlesinger, op. cit., pp. 88-100.

increasingly conservative, defending private property as a natural and necessary right and advocating a strict constitutional government as a check on the majority. His views were expressed in sermons and in the many articles which he wrote for his own magazines and for others to which he contributed. Brownson's first journalistic venture, The Boston Quarterly Review, begun in 1837, was a modest success and was widely read in America until he merged it with The Democratic Review in 1842. Bronson Alcott called it "the best journal now current on this side of the Atlantic";[47] W. H. Channing lamented its discontinuance because he considered it "the best journal this country has ever produced."[48] Its popularity resulted from its editor's intelligent, vigorous treatment of current issues in politics, economics, philosophy, and theology.

Long before Brownson became a Catholic he subordinated the popular will to the higher moral law. In 1836 he said that we owe "allegiance to the popular will only so far as it is in harmony with our convictions of the Just."[49] This was the doctrine of Emerson and Thoreau.

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[47]Schlesinger, op. cit., p. 48.

[48]Ibid., p. 156.

[49]Ibid., p. 76.

Elaborating it in an article in The Boston Quarterly Review in 1838, Brownson defined democracy as "... a form of government under which the people, either as a body or by their representatives, make and administer their own laws."[50] But this did not mean that the people were sovereign, for by sovereignty Brownson understood "that which is highest, ultimate; which has not only the physical force to make itself obeyed but the moral right to command whatever it pleases."[51] And the people, though they had the physical force did not have the moral right. For if they had the moral right as well as the physical force, individual men would be nothing more than slaves of the majority. Each man would be bound in conscience to give whatever the majority demanded. Any act of the majority would be legitimate--whether an arbitrary redistribution of property or the prescription of a particular form of religious worship.[52] Thus the absolute sovereignty of the majority would set up a tyranny as odious as any

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[50]"Democracy," The Works of Orestes A. Brownson, collected and arranged by Henry F. Brownson, 20 vols., Detroit, 1882-1887, XV, 1.

[51]Ibid., p. 4.

[52]Ibid., pp. 4-6.

which ever existed under absolute monarchy or aristocracy. It would have many other evil effects also.

> It creates a multitude of demagogues, pretending a world of love for the dear people, lauding the people's virtues, magnifying their sovereignty, and with mock humility professing their readiness ever to bow to the will of the majority. It tends to make public men lax in their morals, hypocritical in their conduct; and it paves the way for gross bribery and corruption. It generates a habit of appealing on nearly all occasions, from truth and justice, wisdom and virtue, to the force of numbers. ... It perverts inquiry from its legitimate objects, and asks, when it concerns a candidate for office, not, who is most honest, the most capable, but, who will command the most votes? and, when it concerns a measure of policy, not what is just? What is for the public good? but, what can the majority be induced to support?[53]

But this was a false concept of democracy, Brownson asserted. In a true democracy the state has only relative sovereignty, not absolute sovereignty. That is, it has the highest civil and political authority, the power to make laws and govern. But the state itself is subject to something higher, whether the form of government be monarchical, aristocratic, or democratic. What is this highest, ultimate authority which has absolute sovereignty? Justice, answered Brownson. The people as a state, acting in their political capacity and governing themselves, "... are as bound to be just as the individual."[54]

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[53]"Democracy," Works, XV, 6-7.

[54]Ibid., p. 9.

Not that the majority is

> ... exceedingly prone to encroach on the rights of minorities; but we would always erect a bulwark of justice around those rights, and always have a moral power which we may oppose to every possible encroachment.[55]

Furthermore, "the people, as individuals" need to be guarded "against the people, as a body politic."[56] This can be done by always recognizing the higher moral law as sovereign.

> By bounding the state by justice, we declare it limited; we deny its absolute sovereignty; and therefore, save the individual from absolute slavery. The individual, may on this ground arrest the action of the state, by alleging that it is proceeding unjustly; and the minority has a moral force with which to oppose the physical force of the majority.[57]

True democracy, then,

> ... is, on the one hand, the denial of absolute sovereignty to the state, whatever the form of government adopted, and on the other hand, the assertion of the absolute sovereignty of justice. It ... commands both the people and the individual to be just. It subjects both to one and the same law. ...[58]

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[55]"Democracy," Works, XV, 6.

[56]Ibid., p. 12.

[57]Ibid., p. 9.

[58]Ibid., p. 17.

The enactments of the state, therefore, are void and not binding in conscience, "... unless they receive the signature of absolute justice."[59] This signature is to be obtained through "... the universal reason which is ever shining in the human soul," Brownson explained, using Emersonian terms.[60] The theocrat is correct in asserting the sovereignty of God, "the Highest and Best," but wrong "... in making the priesthood the symbol of this sovereignty and the authoritative expounders of its decrees."[61] The democrat likewise acknowledges the Divine Sovereignty, but makes "... the people in a few instances, and the individual in all the rest, the only authoritative expounders of its decrees."[62]

But Brownson was not long satisfied with such a vague and tenuous higher moral law as this, or with such an undependable expounder of it as "the universal reason," and he began to drift away from Unitarianism back to traditional Christianity. Concurrent with this religious reaction was a gradual turning toward conservative

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[59]"Democracy," Works, XV, 10.

[60]Ibid., p. 18.

[61]Ibid.

[62]Ibid.

political doctrine. An important factor in his loss of faith in the people, Brownson confessed in an article in 1843, was the disgraceful Whig campaign and victory in 1840.

> ... what we saw during the presidential election of 1840, shook, nay, gave to the winds all our remaining confidence in the popular democratic doctrines--not measures--of the day; and we confess, that we have seen nothing in the conduct of either party since, that has tended to restore it.[63]

The demagoguery, the disregard of moral principles, the indifference to the national welfare which were so prevalent in the campaign of 1840 were all the spawn of the false notion of democracy which gave absolute sovereignty to the majority. Brownson had mentioned these evils in his article on democracy in 1838. He continued to stress them for years, elaborating them in many subsequent magazine articles.[64]

After 1840 Brownson took refuge from the absolute rule of the majority in a highly legalistic constitutionalism. Like Hobbes, Burke, and Webster, he denied that

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[63]"Democracy and Liberty," Works, XV, 259.

[64]On the tendency of democracy to promote demagoguery, see "Demagoguism," Works, XV, 437-439; "Democracy and Liberty," Works, XV, 239; and "The Republic of the United States," Works, XVI, 84-85.

the majority had the constituent power, the power to make and abolish governments, and asserted that any alterations in government must be brought about through existing legal forms. To admit that the majority can alter the government at will is to make nugatory any existing constitution, Brownson warned. If the majority is sovereign, if it always has the right to rule, it need not regard the constitution at all in passing legislation. For the majority in one age has as much authority as the majority in another. "The majority of the legislature is as much the majority of the people as the majority of the convention that framed the constitution."[65] Why should the dead voice of the past direct the living majority of the people? The constitution was instituted by the majority for the general welfare. Therefore any measure which a later majority may consider to be for the general welfare becomes constitutional. Why should the

> ... sovereign power be hindered from pursuing the general good by a few barren technicalities, a mere lifeless form of words? ... Just as if the constitution could be paramount to the people that made it.[66]

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[65] "The Distribution Bill," Works, XV, 203.

[66] Ibid., p. 204.

But Brownson had no patience with this, the cogent logic of true democracy. "Constitutions," he insisted, "are intended to be a restriction on power, and are needed because power has a perpetual tendency to exceed wholesome limits."[67] In America, governmental power rests in the hands of the majority of the people, who can easily be manipulated by special interests.[68] A constitution is therefore needed as a check on the people and a protection for minorities against the influence of special interests.

> To form a constitution and entrust its preservation to the people is then a manifest absurdity; for then the very power is relied on to protect the constitution from violation, which the constitution is created to restrict, and from which alone the violation of the constitution is to be apprehended. It is like locking up the culprit in prison, and entrusting him with the keys. To say that the people will voluntarily of their own accord sustain a constitution that restricts their sovereign power, is only saying that they will voluntarily, of their own accord, forbear to exercise that portion of their power so restricted.[69]

This sort of democracy in which the people have absolute power and "... the ruling majority the unlimited

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[67]"Constitutional Government," Works, XV, 244.

[68]Ibid., p. 238.

[69]Ibid., pp. 244-245.

freedom to do whatever it pleases"[70] cannot achieve the ends of government: "... to maintain justice between man and man, and to direct the activity of society to the common good of all its members."[71] But even so, unlimited government "... is safer in the hands of the simplemen than in the hands of the gentlemen; ... the democracy ... may be more safely trusted than the aristocracy."[72] For if government be founded on property, "... its whole force will be wielded in favor of property."[73] Like John Adams, Brownson held that there was no security under an absolute form of government, whether monarchy, aristocracy, or democracy.[74]

In the means which he proposed to protect the minority from the majority, Brownson shows the influence of John C. Calhoun. To prevent the absolute rule of the propertied few or of the many, he maintained, the government should be constituted so as to provide a check against the abuse of power. Brownson called this check the veto power and explained that it was achieved by

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[70]"Constitutional Government," Works, XV, 239.

[71]Ibid., p. 232.

[72]Ibid., p. 247.

[73]Ibid., p. 234.

[74]"Popular Government," Works, XV, 291.

balancing a "NEGATIVE power" against "the POSITIVE power called the government."[75] The two powers "... must be lodged in different hands. For the veto power is nothing, if vested in the government itself. It would then be only the government vetoing its own acts."[76]

The constituting of the veto power is one of the most difficult problems of government, Brownson emphasized, for the veto power cannot be arbitrarily created; it must grow out of the natural geographical divisions or cultural traditions of a country. In a democracy the veto or negative power is exercised by the people taken as parts of the whole body politic and is a check on the majority of the whole people, which constitutes the positive power. When an oppressive measure is passed by the majority, any part may veto it. In some countries, where the population, geography, or culture prevent such an organization into parts, a veto power cannot be constituted, "... and such countries seem doomed to all the horrors of eternal despotism."[77]

America is fortunate in having a veto power organized along geographical lines, Brownson pointed out.

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[75]"Constitutional Government," Works, XV, 241.

[76]Ibid., p. 242.

[77]Ibid., p. 246.

Providence ordained that this country should be settled by colonists in distinct, independent, political units, which, cooperating in a single revolution, became independent states. Organized for specific, limited purposes into a single body politic, these states provide the American government with the two powers necessary for a balanced constitution.

> The American people, acting through the federal government, as one people, constitute the positive or governing power; the states, each in its separate independent capacity, constitute the negative or veto power. The positive power is that of the majority. The majority of the American people govern through congress. This is right. This is the only possible rule that can be adopted; and the maxim so common among our politicians, that the majority must rule is accepted. But the majority, according to the constitution is not absolute. It has a right to govern only within certain limits. Whenever it transcends those limits its acts are unconstitutional, and therefore null and void from the beginning. When it so transcends, there is, by means of state organization, a veto power to arrest it.[78]

Thus Brownson, following Calhoun, advocated nullification and the device of concurrent majorities as a check on the majority of the American people. His essay on "Constitutional Government," published in 1842, was an attempt to solve the problem of democratic sovereignty which troubled him in 1838. In it he gave a purely political answer to the problem.

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[78]"Constitutional Government," Works, XV, 248-249.

He soon returned to the higher moral law, however, as his principal check on the majority, combining it with the rigid, unchangeable constitution which he had suggested in "Constitutional Government." In 1843 he explained that the written constitution cannot be considered as the ultimate authority for government, for then the people, who made it, can break it. The real ultimate authority is

> ... the actual constitution or organization of the state. It is the sovereign, and when wisely adapted to the real character of the country, the genius and pursuits of the people, it is always self-sufficing.[79]

By the "actual constitution" Brownson meant the politically organized people, governing through existing, prescribed legal forms.[80]

> The people in a legal or political sense, properly speaking, have no existence, no entity, therefore no rights, no sovereignty, save when organized into the body politic; and then their action is legitimate only when done through the forms which the body itself has prescribed.[81]

This constitutional check on the actions of the people

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[79]"Popular Government," Works, XV, 292.

[80]Ibid.

[81]"Democracy and Liberty," Works, XV, 275.

is needed, Brownson repeated, because individual rights will not be secure if the people are allowed to make and break the constitution at will. Furthermore, government is needed for the people collectively as well as individually, since the people are incapable of governing themselves.[82]

> We confess here to what we know in the eyes of our countrymen is a damnable political heresy but an' they should burn us at the stake, we must tell them this notion of theirs about self-government is all moonshine; nay, can serve no better purpose than to lead them from the high road, and plunge them into the mire from which to extricate themselves will be no easy matter. The very word itself implies a contradiction. There is a government only where there is that which governs, and that which is governed. In what is called self-government, the governor and the governed are one and the same, and therefore no government. That which governs is that which is governed; but how can the governor be the governed or the governed the governor?[83]

This distinction between the governor and the governed was one which Brownson continued to employ for years. It was basic to his constitutional theories and criticisms of the majority principle.

But, one might ask Brownson, if there must be a distinction between the governed and the governor, if the people can act only through existing legal forms which

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[82] "Democracy and Liberty," Works, XV, 274.

[83] Ibid., pp. 272-273.

are prescribed by the organized political body, how is this a guarantee of the constitution and a protection of individual rights against the majority, since the people compose the body politic? What guarantees the "actual constitution"? These are fair questions, Brownson admitted, but he did not propose

> ... to answer them now. We may hereafter undertake to do it, and what we shall have to say will be arranged under the heads of the constitution, the church, and individual statesmen.[84]

Here Brownson strongly implied that his answer would be given in terms of a higher moral law.

He gave it in a long article published in The Democratic Review in 1843. Written when Brownson was wavering on the threshold of the Catholic Church, this article made "the Holy Catholic Church" the final arbiter and guarantor of constitutions. But it failed to give a precise definition of "the Holy Catholic Church." In other respects it was almost a complete statement of Brownson's anti-majority, constitutional theories.

Before he could propose the Church as the final guardian of constitutions, however, Brownson of course had to lay a broad foundation for the necessity of such

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84"Democracy and Liberty," Works, XV, 279.

an authority. He did this by developing in greater detail the theories which he had adumbrated in earlier articles, adding a few new touches here and there. Repeating his old distinction between "the governor and the governed"[85] as necessary to the functioning of any government and calling democratic self-government tantamount to no government, Brownson proceeded to attack the idea of majority sovereignty, to show the necessity of an unalterable constitution and of an authority to preserve it. All of his arguments rest on the basic postulate that the "governor" cannot be identical with the "governed." The sovereign power of government is not created by those who are subjected to it.[86] The belief that it is constitutes the basic fallacy of the contract theory of government assumed by Locke, Rousseau, and Jefferson, Brownson asserted.[87] Jefferson was therefore mistaken when he stated in The Declaration of Independence that governments derive "their just powers from the consent of the governed."[88]

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[85]"Origin and Ground of Government," Works, XV, 304.

[86]Ibid., p. 314.

[87]In his criticism of the theory of the social contract, Brownson is strongly reminiscent of Upshur. Works, XV, 310-312.

[88]Ibid., p. 329.

This justification of the right of revolution by a theory of popular sovereignty was entirely unnecessary, Brownson maintained; the colonists need only have asserted the right of each political community to independence.[89] For the American people were never for a moment in revolt against their own government; as a state they merely threw off the tyranny of a foreign political power, denying the authority of the British Crown in America.[90] They did this by perfectly legal means, but the theory which they presented in justification of it would allow the majority of the people at any time to come together, within or without the existing forms of law, and alter or abolish the constitution.[91]

The other so-called "self-evident truths" of The Declaration of Independence are in reality outright falsehoods or at best only half truths, Brownson insisted. "All men are created equal" is true only in one sense--that all men are human and have a common origin and a common end. In every other respect men are obviously created unequal.[92] Therefore Brownson had no faith

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[89]"Origin and Ground of Government," Works, XV, 329.

[90]Ibid., p. 330.

[91]Ibid., p. 332.

[92]Ibid., p. 330.

that universal suffrage would result in good government, in justice among men.[93] Nor would he admit that it was a necessary means to the end of securing individual liberty.[94] In fact, he asserted, "DEMOCRACY CANNOT ANSWER THE PRACTICAL ENDS OF WISE AND JUST GOVERNMENT."[95] Another error of The Declaration of Independence was in calling life, liberty, and the pursuit of happiness inalienable rights. If they were, argued Brownson, government could never demand that anyone risk his life in the defense of his country, could never imprison or execute a felon.[96] Here Brownson ignored the fact that the men who declared American independence believed in the popular regulation of life, liberty, and pursuit of happiness so as to assure the greatest amount of these precious rights for the greatest number. That "it is the right of the people to alter or abolish" governments when they see fit is also false if by "the people" is meant a collection of individuals outside of civil society, an aggregation of men unregulated by basic law, a

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[93]"Origin and Ground of Government," Works, XV, 382-383.

[94]Ibid., pp. 387-388.

[95]Ibid., p. 419.

[96]Ibid., pp. 330-331.

mob.[97] Brownson neglected to explain how any aggregation of individuals, even a mob, could work toward a common end outside of civil society.

The chief fault of American politicians is that they fail to remember the distinction between the people legally convened and the people gathered together as a mass of individuals, between a convention and a caucus.[98] Brownson considered Andrew Jackson the worst offender in this respect because he argued that the sanction of the people is enough to legitimize any action,[99] that "a power repeatedly exercised by congress and acquiesced in by the people, is taken as constitutional."[100] Thus Jackson virtually abolished the Constitution and defied the will of our forefathers who explicitly limited the power of the majority, especially in amending the Constitution but also in passing legislation. Here Brownson, like his contemporaries, assumed the right of one generation to make law for all others.

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[97] "Origin and Ground of Government," Works, XV, 331.

[98] Ibid., p. 332.

[99] Ibid., p. 333.

[100] Ibid., p. 345.

But what is the justification of "this theory of the absolute right of the majority to govern?" inquired Brownson.[101] It was not a recognized principle in any of the ancient democracies, certainly not in the Athenian democracy. Nor do any of the great political writers defend it as fundamental to government.[102] Like Upshur, Brownson denied that the majority has a natural, God-given right to rule, that its right to govern can be based on physical power, that the majority principle is a practicable rule of government;[103] like Upshur also he insisted that the majority principle places the minority completely at the mercy of the majority.[104] In addition, he repeated his earlier objections that the majority principle "strikes at the foundation of all morals"[105] and that it "creates a multitude of demagogues."[106] The majority principle, then, "is not a natural right, but a mere civil regulation."[107] It is not a rule of government

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[101] "Origin and Ground of Government," Works, XV, 337.

[102] Ibid., p. 338.

[103] Ibid., pp. 337-340.

[104] Ibid., pp. 340-343.

[105] Ibid., p. 340.

[106] Ibid., p. 341.

[107] Ibid., p. 347.

universally adopted in all countries; and where it is adopted, it is used only as a convenient regulation within certain fixed limits. The power of the majority, therefore, does not create the constitution but is instead the creature of the constitution and is valid only within the sphere assigned it by the constitution.

> The sooner we learn this the better will it be for democracy and for the commonwealth. The true watchword and battle-cry for us is not, The majority have the right to govern, but, THE CONSTITUTION must govern.[108]

But what was the origin of constitutional government, if not in a compact by the majority? In the spontaneous development of human nature and in the ordinance of God, Brownson answered. For government must meet some need of human nature, or there would be no reason for its existence.[109] And it must have divine sanction, or it cannot be legitimate, cannot have a right to command obedience.[110] God is the supreme sovereign. The origin and ground of government is in His Will.[111] Governments exist therefore by divine appointment in order that men

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[108] "Origin and Ground of Government," Works, XV, 347.

[109] Ibid., pp. 325-326.

[110] Ibid., pp. 326, 348.

[111] Ibid., p. 351.

may carry out the Divine Will, but even more important for this purpose is "the holy Catholic Church," a divine institution through which God's will is made known directly to man.[112] Supreme over all civil institutions, the church acts as God's spokesman and judge on earth,[113] directing men to obey civil governments which are in accord with the divine will and freeing them of the obligation to obey those which are not. The advantage of this theory of government seemed obvious to Brownson.

> It is the only theory of government which I am acquainted with, that can legitimate resistance to the civil ruler without legitimating rebellion, which is incompatible, as we have seen, with government itself.[114]

The great defect of Calhoun's theory of government, Brownson now saw, was that it derived sovereignty from the

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[112] "Origin and Ground of Government," Works, XV, 349.

[113] Ibid., p. 353. The contrast between Brownson's views on the moral law in 1838 and 1843 is striking. In 1838 as a Unitarian he had held that unjust laws are not binding in conscience, that the individual judges for himself what laws are just, that theocrats are wrong in making the clergy the judge. In 1843 as a theoretical Catholic and afterwards as a practical Catholic, he held that unjust laws and unjust governments are void but denied that the individual could judge the justice of laws and governments for himself. He asserted that the only possible judge is the Church, the clergy.

[114] Ibid., p. 348.

people and made unanimity the standard of right and wrong.[115] He no longer thought Calhoun's concurrent majority an adequate check on the majority of the people.

In America, then, which is a "constitutional republic," the people acting under the constitution are the state.[116] "... no action of the people, through the legislature, is law, unless authorized by the constitution."[117] The people must also act always in accordance with the laws of God as taught by the Church. For even though they were the causative agency through which the constitution was set up, they do not give the constitution its legitimacy and authority.

Men ... cannot create, or institute, the sovereign, they cannot originate or commission government; but they

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[115]"Origin and Ground of Government," Works, XV, 362-363.

[116]Brownson defined a constitutional republic as "... a government in which power is held as a trust from the commonwealth, to be exercised for the public good, according to a prescribed law. ..." Ibid., pp. 375-376.

[117]Ibid., p. 392. A strict constructionist, Brownson detested the "general welfare" doctrine of the implied powers of government enunciated by John Marshall. He called it an utter abandonment of constitutional government placing all the rights of the people, individuals and minorities "... at the mercy of the lawless will of an irresponsible majority,--inevitably leading to anarchy, oppression, and despotism." "The Distribution Bill," Works, XV, 205.

> can provide, more or less wisely, for the free, full, and authoritative expression of the divine will, the only legitimate sovereign.[118]

A constitutional republic, the American government was not created de novo by the people during the revolution, but was modified under existing legal, constitutional forms in accordance with the principles taught by the Church. This is always the case with legitimate governments.[119] Only illegitimate government, unable to enforce its decrees or demand obedience, could result from the democratic theory of government which makes the will of the majority the supreme law and the source of governmental authority, which allows the people to change the government illegally whenever they please. By 1843 Brownson had given up trying to persuade his fellow Americans that democracy did not mean the absolute sovereignty of the majority. Recognizing that he could not change the universally accepted meaning of a word, he thereafter always opposed democracy in favor of constitutional republicanism.[120]

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[118] "Origin and Ground of Government," Works, XV, 393.

[119] As examples of legal alterations in governments, Brownson cited the English and French Revolutions. Ibid., p. 396.

[120] "Legitimacy and Revolutionism," Works, XVI, 75.

Since Brownson was not yet a professed Catholic in 1843, his definition of the Church was not as precise, his assertion of the need for its authority not quite as bold as it was after 1844, when he was a practical Catholic with more zeal than the average convert.[121] Brownson was not long in making his position clear, however. In an article published in October, 1845, in Brownson's Quarterly Review, his new magazine, he explained that by "Catholicity" he meant "... the Roman Catholic Church, faith, morals and worship."[122] In this article he proposed to maintain the following thesis: "... that without the Roman Catholic religion it is impossible to preserve a democratic government, and secure its free, orderly, and wholesome action."[123] Dismissing the democratic theory of "the virtue and intelligence of the people" as a "joke" and "humbug,"[124] Brownson pointed

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[121] Answering Brownson's article on the "Origin and Ground of Government," the editor of The Democratic Review called Brownson's theory of government paternalistic and objected that his definition of a "constitutional republic" allowed room for any monarchy in Europe. He also asked what Brownson meant by "the Church." The United States Magazine and Democratic Review, XIII (1843), 653-658.

[122] "Catholicity Necessary to Sustain Popular Liberty," Works, X, 1.

[123] Ibid.

[124] Ibid., p. 3.

out that popular control of government necessitates a controlling authority to regulate the people. "THE PEOPLE MUST HAVE A MASTER," he insisted.[125] The protestant religion cannot provide this master, for in it the people are themselves the master.

> The Roman Catholic religion, then, is necessary to sustain popular liberty, because popular liberty can be sustained only by a religion free from popular control, above the people, speaking from above and able to command them,--and such a religion is the Roman Catholic. It acknowledges no master but God, and depends only on the divine will in respect to what it shall teach, what it shall ordain, what it shall insist upon as truth, piety, moral and social virtue.[126]

But "the authority of Catholicity is spiritual," Brownson hastened to explain, in order that he might allay the fears of Protestant America. "We demand it as a religious, not as a political power."[127]

This was a slight retreat--perhaps only strategic--from the position he had taken in 1843, that the Church was the authorized judge of the legitimacy of governments. Brownson soon reasserted this authority of the Church, however. The individual cannot judge for himself whether

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[125]"Catholicity Necessary to Sustain Popular Liberty," Works, X, 12.

[126]Ibid.

[127]Ibid., p. 13.

an existing government has transcended its powers and should be resisted, he wrote in 1848, for this would result in anarchy, would justify revolution. For the same reasons the people as a collection of individuals outside the state cannot make the decision. Nor can the people organized as a state, for as the state they are inseparable from the government, and the government obviously cannot judge its own case.

> Who, then? Evidently the power whose function it is to declare the law of God. Since the government derives its authority from God, and is amenable to his law, evidently it can be tried only under that law, and before a court which has authority to declare it, and to pronounce judgment accordingly.[128]

Brownson refused to admit for a moment that such a court did not exist. "We, as Catholics, know what and where that court is. ..."[129] The Church has the authority to judge civil governments, Brownson maintained, because "politics are nothing but a branch of general ethics, and ethics are simply practical theology."[130]

This was certainly claiming more than a mere spiritual authority for the Church. Brownson was moving

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[128]"Legitimacy and Revolutionism," Works, XVI, 69.

[129]Ibid.

[130]Ibid., p. 70.

gradually toward the ultra-montane position, toward the complete subordination of the State to the Church. Beginning in January, 1853, he published a series of articles on the temporal and spiritual orders which defended the subordination of the State to the Church in all things, temporal as well as spiritual. The Church, he argued, is the "guardian and judge of the law of God over both sovereigns and subjects, in temporals no less than in spirituals."[131] She has the authority to pronounce sentence in both spheres,

> ... which sentence ought to have immediate practical execution in the temporal order, and the temporal power that resists it is not only faithless to its trust, but guilty of direct rebellion against God, the only real sovereign, fountain of all law, and source of all rights. ... She must have the right to take cognizance of the fidelity of subjects, since they are bound to obey the legitimate prince for conscience sake; and therefore of the manner in which princes discharge their duties to their subjects, and to judge and to declare whether they have or have not forfeited their trusts and lost the right to reign. ... The deposing power, then, is inherent in her as the spiritual authority, as the guardian and judge of the law under which kings and emperors hold their crowns, and have the right to reign; for in deposing a sovereign, absolving his subjects from their allegiance, and authorizing them to proceed to the choice of a new sovereign, she does but apply the law of Christ to a particular case, and judicially declare what is already true by that law.[132]

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[131] "Temporal and Spiritual," Works, XI, 31.

[132] Ibid., pp. 21-22.

This was certainly an undeniable claim of political power for the Pope in America. If Brownson's arguments are true, then the Holy Father has authority to judge the acts not only of monarchs and their subjects but also of the American majority and of its elected presidents and representatives. He has the right to depose presidents, to order the majority to obey or resist the government. If he has this power, then indeed sovereignty does not reside in the majority of the American people, as Brownson so repeatedly and strenuously insisted it did not, but rather in the Pope as Vicar of Christ. The assertion of such claims for the Church of course brought down a storm around Brownson's head, not only from both tolerant and "Native American," "Know-nothing" Protestants[133] but from his fellow-Catholics as well. Most of his brothers in the faith disagreed with him and had good grounds for so doing. The Irish-Americans especially could not brook his ultra-montane doctrines.[134]

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[133]Gabriel, op. cit., pp. 57-58.

[134]Schlesinger, op. cit., pp. 210-211. Brownson was censured for his articles by the Bishops of Pittsburgh and Cincinnati. Ibid.

The weight of Catholic authority is opposed to Brownson on the deposing power of the Church and the

And his constitutional theories were equally distasteful to them. National constitutions, instituted by God, are deeper, more permanent in the life of a

Footnote 134, contd.

absolute subordination of the State to the Church. Speaking of the need for an authority to punish a state guilty of injuring another, Francisco Suarez (1548-1617) says, "This power does not reside in a superior, since the several states have none. ..." De Bello, sec. 4, n. 5, Paris, 1858. Quoted by John K. Ryan in Modern War and Basic Ethics, Milwaukee, 1940, p. 13. Speaking in an Encyclical, Immortale Dei, in 1885, Pope Leo XIII gave the traditional and approved Catholic teaching on the intertwined and overlapping authorities of Church and State:

"God has divided the government of the human race between two authorities, ecclesiastical and civil, establishing one over things divine, the other over things human. Both are supreme, each in its own domain; each has its own fixed boundaries which limit its activities. ... As ... the same subjects are under the two authorities, it may happen that the same matter, though from a different point of view, may come under the competence and jurisdiction of each of them. ... Therefore, between the two powers there must reign a well ordered harmony. Not without reason may this mutual agreement be compared to the union of body and soul in man. Its nature and extent can only be determined by considering ... the nature of each of the two powers, and in particular the excellence and nobility of the respective ends. One is committed directly and specifically the charge of what is helpful in worldly matters; while the other is to concern itself with the things that pertain to heaven and eternity. Everything therefore in human affairs that is in any way sacred, or has reference to the salvation of souls and the worship of God, whether by its nature or by its end, is subject to the jurisdiction and discipline of the Church. Whatever else is comprised in the civil and political order, rightly comes under the authority of the State; for Christ commanded us to give to Caesar the things that are Caesar's, and to God the things that are God's." Quoted by Pius XI in Rappresentanti in Terra, Encyclical Letter on the Christian Education of Youth, 1929, Four Great Encyclicals, New York (Paulist Press), n.d., pp. 52-53.

nation, he held, than the mere written constitution; the true constitution is "the living soul of the nation,"[135] the habits, manners, and customs of a people as well as their government. Since the political constitution of a nation is perfectly adapted by God to the genius of a people, it must be preserved; to seek to change it is to war against God.[136] "... legitimate government ... cannot be resisted without sin."[137] It is easy to see why the Irish would abominate such doctrine; if it were true, they could not rebel against their English masters unless the Pope gave them permission or ordered them to do so. But Brownson went even farther than this. The Church would never grant such permission or issue such an order, he believed, for "the constitution of Ireland is not, never was, and never can be republican." Royalty and nobility, "the crown of Great Britain," were integral parts of her constitution.[138] A democracy in Ireland would be madness. Ireland's only hope was to restore her national parliament under the British Crown.

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[135]"Political Constitutions," Works, XV, 561.

[136]Ibid., p. 563.

[137]"Legitimacy and Revolutionism," Works, XVI, 69.

[138]"Political Constitutions," Works, XV, 567.

Brownson's theory of government, therefore, would seem to amount to this: any existing form of government may not be altered because it is instituted by God and is perfectly adapted to the culture of the nation to whom God gave it. His opinions on American Government support this interpretation. For he held that America had no more right to change her constitution than Ireland. The American people did not have the moral power to substitute a monarchical for their present republican government if they chose. The republican form of government grew up naturally in America and is the best for us, Brownson maintained.[139] The people did not make the American Constitution and never had control over it; therefore they cannot alter it.[140] Brownson would not admit that there was any revolution, any real overthrow of the government during the so-called American Revolution. The colonies did not change their constitutions, subvert their governments. Before The Declaration of Independence they were "held by compact to the crown of Great Britain. The tyranny of George III broke that compact and absolved the colonies from their allegiance."[141]

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[139]"Political Constitutions," Works, XV, 561.

[140]Ibid., p. 562.

[141]"Legitimacy and Revolutionism," Works, XVI, 77.

They were then independent, sovereign states and declared themselves such through existing legal institutions. The war which they fought was not a revolution but a war in defense of their sovereignty.[142] The American Constitution today is still essentially the same as it was before the War for Independence, Brownson argued. "Our constitution is fundamentally the British constitution, without the hereditary house of lords and hereditary monarchy."[143]

To such lengths would Brownson go in order to deny that the majority of the people have the right to change their government. In riding his theories so hard he forgot much of history, if he did not play fast and loose with it. The most obvious defect of his interpretation of the American Revolution is that the American people revolted, not on his grounds, but on those which Thomas Jefferson so aptly stated for them in The Declaration of Independence. One might also wonder why the Church did not play a part in settling the dispute. But according to Brownson's theories, there was no call for the intervention of the Church because there was never any change of government. Consequently no explanation of its

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142"Legitimacy and Revolutionism," Works, XVI, 77-78.

143"The Republic of the United States," Works, XVI, 98.

failure to act was necessary.[144]

In spite of Brownson's ultra-conservative constitutionalism, however, in spite of his concern over the dangers of unrestricted majority rule, he did not propose any limitations on suffrage or office-holding by property qualifications. In his day those were dead issues which had been thrashed out and settled once and for all by the preceding generation. Nor did Brownson write at length or even refer very often to the checks and balances of the United States' Constitution. These were understood to be essential to our government, and Americans did not need to be persuaded of their value. In preaching the sanctity of the Constitution, therefore, Brownson implied his approval of balanced, separated powers. What Americans did need, however, in his opinion,

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[144]Brownson also denied that Texas ever revolted against Mexico. An independent state of the United States of Mexico, she was promised an independent constitution in 1824. The revolutionary government of Santa Anna dissolved the Mexican Confederacy; Texas was absolved from allegiance to Mexico, and was then free to adhere to the new government or declare herself independent. She declared herself independent. "The Recent Election," Works, XV, 521.

Brownson called the attempts to introduce republicanism into South America and France disastrous failures. These attempts violated existing, natural, national constitutions, and history shows that all such tampering with established constitutions unsuccessful and extremely harmful. "Political Constitutions," Works, XV, 563-565.

was to be properly enlightened about the moral law, its source, and its earthly teacher and preserver. They needed to be shown the necessity of an ecclesiastical authority above the civil, to support, guide, and regulate it. Brownson was content to rely on the Church and Constitution as checks on the majority and guarantors of such individual rights as that of private property.[145]

One of Brownson's doctrines, at least, his constitutionalism, was in line with the trend of political thought during his day. There was a general tendency among mid-century writers to deny that the majority had the right of rebellion and the constituent power.[146] Brownson's constitutionalism, his assertion of governmental authority, was perhaps more extreme and rigid than the average, for he made it a sin against God to oppose and subvert the existing government. His departure from the American norm in this respect was perhaps due to his unusual version of the higher law and of

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[145]Like Cooper, Brownson considered private property essential to civilization, economic equality impossible and undesirable, and a permanent landed gentry an advantage to a nation because it was a stabilizing force. See "Politics and Political Parties," Works, XVI, 364-368; "Liberalism and Progress," Works, XX, 358-359.

[146]Carl Becker, The Declaration of Independence, pp. 233-234; Mims, The Majority of the People, pp. 38-42.

its bearing on politics--a version with which his contemporaries intensely disagreed. But Brownson's views on the interrelations of Church and State were extreme even for a Catholic. Proof of this is derived not only from the storm he raised in the Catholic press but even more cogently from his inability to cite anywhere in his lengthy and repetitious articles a case in which the Church used its supreme authority to judge a civil government or to order or forbid a revolution; an even greater defect of his theory results from his failure to describe any existing ecclesiastical machinery for the making of such judgments. Furthermore, Brownson was giving the Church authority in a sphere in which she has never claimed it by an official pronouncement. In so doing he was opposing the consensus of the most authoritative Catholic authors as well as of contemporary Catholics. The elaborate structure of Brownson's anti-majority political theories topples to the earth, therefore, since the main pillar necessary to its support--ecclesiastical authority in politics--is nonexistent.

Because of this radical defect, Brownson's political writings have a certain quality of artificiality, of unreality about them. They seem to be almost totally divorced from the actual world. Brownson is constantly

knocking down straw dummies. For his chief bête-noire, the tyranny of the majority, is based on a misinterpretation of democratic majority rule. In a democracy the minority is not enslaved because it is required to comply with the decision of the majority, for it is free to use its powers of persuasion to form a new majority and need submit only so long as its opinion remains the minority opinion. Nor does the majority have the right to force its religion on the minority. Brownson's distinction between the governor and the governed, his insistence that democracy is equivalent to no government seem equally artificial, equally misrepresentative of democracy. Democracy does not mean no government, a state of anarchy, but rather that the majority of the people shall determine what laws are to govern individuals and groups within the body politic. Brownson's refusal to admit that the people are the source of governmental power forced him to draw artificial distinctions between the people as an aggregate of individuals and the people as a politically organized state, to imprison the people within their own constitutional laws and forbid them to alter these laws, and virtually to deny that a government ever had a beginning or that a government had ever been successfully overthrown. Brownson

either ignored history or made it conform to his theories rather than his theories conform to it. He twisted Catholic teaching on the origin and authority of government to make it suit his purposes. Granting that government must receive its authority from God in order that its decrees be binding on the individual, the people are nevertheless the means through which governments receive the divine sanction, for God works his will ordinarily through secondary causes in the natural order. Each nation has the right to determine its own form of government. And if a people have the right to set up their own government, they also have the right to alter it when necessary.

These fictions and rationalizations, then, almost completely divorce Brownson's theories from the real world. A rigorist where principles were concerned, Brownson was obsessed with a few fixed ideas such as constitutional government and the universal moral law which he would not modify, either to harmonize them with the facts of history or to meet the exigencies of practical life. Frequently, therefore, he seems more concerned with the abstract logic of his argument, with their internal and independent consistency, than with their application to real life. He impresses the reader

as having been a man motivated by strong, interfused religious and political convictions rather than by any great fear of an economic battle in which the majority would be victorious through its political power and would confiscate his and other men's property. Unlike Cooper and the Federalists, Brownson did not harp constantly on the danger to property arising from absolute majority rule. He warned against the infringement of all individual rights, intellectual and spiritual as well as economic; he feared such evils as demagoguery and the passage of ill-advised legislation, evils that would affect the entire nation, that would injure all classes.

III

Brownson on the one hand and Emerson and Thoreau on the other represent two completely antithetical reactions to the problem of majority rule and individual rights. Having in common only a distrust of the decisions of the majority and a firm belief in a higher moral law, they differed on nearly every other question which they touched. Emerson and Thoreau derived the moral law directly from the individual conscience, Brownson from divine revelation, a traditional body of doctrine

preserved and taught by the Catholic Church. Emerson and Thoreau despised and rejected all tradition, whether in religion or politics, because they feared that it would impede man's moral growth. In contrast, Brownson was as much a traditionalist in his political opinions as in his religious convictions. We are bound by our ancestors' decrees, according to him, and may not disobey the constitutional rules which they formulated for us. We may not radically change the constitution and must make all modifications in our government in accordance with its provisions. We are obligated to obey the government, for it is a sin to rebel against it.

On all of these issues Thoreau was at the opposite pole from Brownson. Like Emerson he had no use for outworn legal traditions, for the laws of his ancestors. But he went farther than Emerson, calling the United States government an empty tradition trying to perpetuate itself, and advocating open disobedience of the government where the law of the majority conflicted with the law of conscience. To him civil disobedience by peaceful means was a virtue, not a sin. He advised the abolitionists to withdraw all support from the government of Massachusetts. He urged people not to pay their taxes. He longed for the very condition which Brownson abhorred--

a state of anarchy, of no government. To him real democracy was exactly what Brownson in his arguments said government by the governed inevitably led to--no government. Brownson's term of opprobrium was Thoreau's term of approbation. Thoreau objected to majority rule because it was preventing the attainment of that state of complete individual independence and was enslaving man by subordinating him to government. Brownson, in contrast, objected to majority rule as the supreme law of the land because he feared that it would bring on anarchy, chaos, and despotism, that it would destroy moral laws and constitutional restrictions, would grant license to the mass and render individual rights insecure. Thus Brownson and Thoreau objected to making majority rule the basic principle of democracy for quite opposite reasons in one respect--the one because it subverted true government, the other because it preserved and strengthened government. In another respect their objections to the majority principle were alike, for they both considered it to be destructive of true morality. Brownson maintained that the "absolute sovereignty" of the majority made the majority independent of the divine law. Thoreau objected to majority rule because it stifled the individual and because, in his opinion, a

man more right than his neighbors was already a majority of one.

The treatment of the majority principle by such complete opposites as Brownson, a Catholic, and Emerson and Thoreau, transcendentalists, suggests how deeply rooted in American culture was the problem of the majority will and individual rights a hundred years ago. This problem impinged on two entirely antithetical philosophies--the Catholic and transcendental. No American thinker attempting to discuss the central problems of his age could ignore the questions raised by the majority principle, for they lay at the heart of the American social and political experiment, and all philosophies, no matter how diverse--whether anarchist or constitutionalist, transcendentalist or Catholic, had some bearing on them.

CHAPTER IX

CONCLUSIONS

This dissertation has indicated that when Americans criticized democracy, they did so in terms of the majority principle, trying to show that strict interpretation and application of it were incompatible with justice. The literature in which this criticism of American democracy appeared was generally of second rate quality, with the exception of the works of Irving, Emerson and Thoreau. Its forms were chiefly the novel and the essay. In these forms, as well as in the other less important forms, the best artistic expression of the stock criticisms of the majority was the satirical. In satirical literature alone does the attack on the majority principle have any real artistic value. In the Salmagundi essays of Irving the style is easy and polished, the humor pointed and diverting. In Cooper's Monikins and Kennedy's Quodlibet the satiric representation of the excesses of Jacksonian America is often brilliant and frequently just; the narrative and expository elements

in these satiric novels are more completely fused than in Cooper's anti-rent novels and Brackenridge's Modern Chivalry. After reading this extensive anti-majority literature, one sees that it is a social and political document, that American men of letters were very much influenced by contemporary political issues and problems, and that these literary artists assimilated their anti-majority doctrines very imperfectly, expressing them for the most part in rough, inferior artistic form.

These criticisms of the majority appear in a definite, traditional pattern in American literature during the first half of the nineteenth century. Originating at the time of the establishment of our national government, this complex of anti-democratic ideas never entirely lost the imprint of the Federalist matrix in which it was molded. Nearly all of the root ideas of the American anti-democratic tradition are to be found in the Federalist political thinkers. Adams, Hamilton, and Madison gave the criticism of the majority principle an initial economic bias which it retained for decades. In their economic interpretation of politics they emphasized that an all-powerful and insatiable majority would be a constant threat to the property rights of the minority. Although from time to time they mentioned the danger to

other individual rights also, these played only a negligible part in their whole argument. Their criticism of pure democracy on the ground that men of superior ability would be reduced to the level of the majority suggests that they were interested in the preservation of certain cultural values as well as of their property. But they could not dissociate these values from economic freedom and the status quo in private property. They could not bear the thought of being governed by backwoods farmers and urban workmen. Hence all of their warnings about levelling, about the invasion of individual rights, about demagogues, and even about the violation of the absolute moral law, have a strong economic flavor.

The basic pattern, then, was laid down in Federalist political thought. Practically all literary expressions of doubt about the majority principle conformed to this pattern to a certain extent. Even those critics of majority rule who were not motivated by economic interests at all repeated some of the Federalist objections. For example, the ultra-democrat Emerson, who minimized the danger to persons and property under majority rule, warned against the social pressure of the brutal mob and the influence of unscrupulous political

leaders. This was because he was principally concerned about individual independence and adherence to the moral law and because he feared that the majority would deprive the individual of independence. At the opposite extreme from Emerson, the Federalist literary figures--Dennie, Fessenden, and the Connecticut Wits--reproduced the pattern of Federalist political doctrine about the majority--economic arguments and all--without omitting a single major criticism. The other critics between these two extremes selected such elements in the anti-majority tradition as seemed important to them. Brackenridge harped on cultural levelling, respect for individual rights, demagoguery, and the moral law in his critique of democracy. Kennedy satirized the levelling tendency and demagoguery of Jacksonian Democracy and accused the Jacksonian majority of endangering individual property rights. Cooper made the tyranny of public opinion and the majority's hatred of "aristocracy"--anything superior to its own ways--the burden of his criticism of American democracy. In addition he accused the anti-renters of abusing their power as a majority in order to invade property rights and warned that a wanton application of the majority principle would result in the utter destruction of property rights and the collapse of the state.

Thoreau and Emerson objected to the rule of the majority on the grounds that it led the individual away from the source of true morality which lay within his heart. The critics of majority rule feared that the majority would violate one or all of three basic human rights:

1. Property rights.
2. Cultural rights.
3. Spiritual rights.

The checks proposed in order to prevent the violation of these basic rights by the majority were also pretty well standardized, and most of these--a government of separated powers checking and balancing each other, a written constitution interpreted by a supreme court, property qualifications for office and suffrage--were set forth in the writings and speeches of the Federalists, who never wished a real, effectual democracy in the first place. With the exception of the property qualifications, these checks on the majority became an established part of American government and were approved by all the literary men studied in the preceding chapters, with the exception of Emerson and Thoreau, who did not consider the form of government or the religious preservation of the Constitution important to American democracy. In

lieu of a property qualification for suffrage and office-holding, these men of letters made various suggestions for insuring justice under majority rule, depending on their political and religious convictions. Brackenridge appealed to the people to recognize the responsibilities which democracy placed upon them, to respect the rights of individuals, to use common sense and elect only competent men to office. Kennedy proposed that the rascally Jacksonian demagogues be turned out of office and replaced by loyal, dependable Whigs. Cooper urged that the people respect the law, civil and divine; he pleaded for more good taste and good sense in America, for tolerance of individuality and respect for individual rights, for less grasping and selfishness and a more genuine desire to see justice done. Brownson was sure that if America would preserve her national constitution, would submit to the temporal and spiritual authority of the Catholic Church and live according to the moral laws taught by the Church, there would be little to fear from rule by the majority under a democratic government. Thoreau insisted that the only way to escape the tyranny of the majority was to abolish the political state and leave individuals free to follow their own moral promptings. Emerson said virtually the

same. Thus the two transcendentalists were in a class apart from the other critics of the majority, for they believed that the ideal state would be one in which government would be reduced to a bare minimum or abolished altogether.

How sound were the arguments of these men against majority rule? Their principal contention was that the majority, if unrestricted, would violate moral principles and infringe individual and minority rights. But under close examination this argument does not prove to be valid. It has never been a doctrine of American democracy that the majority is not bound by moral principles. Of course the majority is obliged to adhere to moral principles, to respect such individual rights as freedom of speech and worship. Jefferson, an ardent champion of the majority, said that to be just, the rule of the majority must be reasonable. In saying this Jefferson stated a fundamental democratic principle which must govern the rule of the majority. If the majority were not obligated to be reasonable, there would be no way for the minority to form a new majority, for it would be deprived of the rights of free speech, of a free press, and of freedom of assemblage; and if there were no moral principles superior to the will of the majority, it would

be licit for the majority under Hitler to persecute Jews and Catholics. Another defect in the anti-majority argument is that American conservatives have constantly used minority rights as an argument to justify minority rule and as a wedge to actually introduce minority rule. But to assume, as they have, that individual rights are less likely to be invaded under minority rule than under majority rule is fallacious; history is against them. To assume, as did Marshall, Kent, and Cooper, that Federalist or landlord law is the divine law, the natural law, is fallacious. To assume as did Brownson that the Catholic Church must exert temporal authority, must approve and condemn constitutions, judge the acts of majorities and princes, and tell the people when they may rebel, is fallacious because the Church claims no temporal authority and would be fallible in temporal matters anyway. The democratic theory is that in the long run the majority is a more trustworthy sovereign than the minority, that the majority would have no lasting motive for violating the political and spiritual rights of individuals, that it is not the source of the moral law but that it must be allowed to determine how moral principles are generally to be applied. This is the theory that the Federalists and other anti-majority critics repeatedly controverted.

The motives back of this voluminous criticism of the majority principle in politics and literature appear to have been primarily economic. All of the political writers studied in this dissertation seem to have been swayed by their economic interests in opposing the majority principle. This is so in spite of their obvious sincere concern for the welfare of their country and the preservation of certain cultural values. For they thought of both in terms of their own social and economic class, of its continued leadership and dominance. The same solicitude for property rights appears in literature as in political thought, though often greatly diluted by interest in cultural values. No man of letters, except Emerson and Thoreau and possibly Brackenridge and Brownson, was entirely free from economic motives in his criticism of the majority principle. All except Thoreau were somewhat conditioned by the dynamics of economic individualism prevalent at the time.

A combination of economic and cultural interests, therefore, accounts for the "nostalgic yearning" of Americans to "circumvent the implications of the majority principle." The results of the criticism arising from this yearning have been both good and bad. Critics of the majority principle like Thoreau, Emerson and

Brackenridge, who were primarily concerned with the protection of cultural and spiritual rights, performed a valuable service in reminding Americans that democracy means operation of the majority principle with respect for minority rights. This was a worth-while criticism of nineteenth century American democracy. But critics like Adams, Hamilton, and Fessenden, whose pleas for individual rights included the preservation of minority economic privileges, who made the protection of these privileges their principal concern, have had an unfortunate effect on American democracy because their doctrines are anti-democratic and because they have been far more influential in America than the liberal critics. The American conservatives have professed faith in the sovereignty of the people, in the rule of the majority because these were the alleged principles on which the nation won its independence and established a federal government. But these same men drew back from the actual practice of the democratic principle of majority rule. While asserting their faith in democratic ideals, they set about devising and defending means by which the majority principle could be restricted within certain safe limits and the will of the majority frustrated. Thus in a nation whose government was dedicated to carrying out

the popular will, the first nation in which a genuinely democratic government was seriously proposed, men would not allow the central doctrine of democracy--the rule of the majority--to take effect. Using protection of the economic, cultural, and spiritual rights of the minority as an excuse for a balanced government to check the majority, managing to balance the government and check the majority for a whole generation by property qualifications for suffrage and then by constitutionalism and judicial review when universal suffrage was generally adopted in America, the conservatives have succeeded in establishing a respectable, nicely rationalized, plausible anti-majority tradition in America. In so doing they have effectively impeded the functioning of democracy.

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