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The challenge to democracy II. The citizen and the power to govern

J. H. Powell
Iowa State College

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The Challenge to Democracy

II. The Citizen and the Power to Govern

By J. H. Powell

The first thing any American says to a foreign visitor, wrote Charles Dickens in a wretched mood, is "what do you think of our institutions?" We are still a bit like that. Not so quaint, perhaps, as when Dickens knew us, but we still wear our institutions on our sleeves, and as with most things so familiar and so publicly displayed we seem to take them for granted. They mean as much to us as the impressive buildings that house the government offices but sometimes little more.

Now the purpose of this series of bulletins is not only to emphasize the present crisis in democracy, but also to stress the need, so pressing in these times, for us all to use the crisis of the moment to learn more about democracy, so that we may preserve and enrich our heritage. In this particular bulletin we are concerned with the part governmental institutions play in building and preserving democracy; and before we go on with it we shall have to show how and why this matter is important.

THE NATURE OF INSTITUTIONS

People tend to look on governmental institutions in an irrational way. Some regard them as sacred things that ought to be venerated and adored regardless of the way they work; others believe they ought to be abolished because they have not achieved a heaven on earth. Most of us are indifferent or contented under institutions that don't bother us, until some crisis in public affairs reveals a conflict between social problems and constitutional powers; then we are as ready as the next to scold or praise.

Public opinion concerning the Supreme Court is revealing in this connection. Throughout its history the Court

1This bulletin is the second in a series being prepared by members of the Department of History and Government, Iowa State College.
2Instructor in history.
has been bitterly attacked as tyrannical and undemocratic by some, worshipfully praised as the guardian of liberty by others. But except in times of real conflict the great body politic in America has paid very little attention to the Court. Even today among a group of average people there are very few who can name the nine justices. But comes an attempt to define exactly the functions of the Court, an attempt (whatever we may think about it) publicly made by the democratic process, and excitement is immediately stirred up. Few look to the real problem, which is whether or not the constitution is adequate for changed governmental problems; most are concerned rather with preserving the ancient and respected form of an institution.

This habit of thinking is in one way healthy, because it means American people are determined to preserve the machinery of government which has given them democracy in the past. But in another way it is dangerous, for it leads to an uncritical acceptance of the form rather than a critical evaluation of the function of part of the government. Too much attention to the form of a government, too little to its successful working, is one way of surrendering democracy.

So we must take a realistic point of view toward institutions, acknowledging that they are the creations of human beings, neither sacred nor profane in themselves, neither good nor bad except as they work well or ill. In their fondness for institutions the American people have probably been more conservative, more reluctant to change, than wisdom might have dictated, but this is sinning on the right side. Only let us be sure that we are not so conservative that the dead hand of the past chokes us in an affectionate grasp; no institution is worth the price of human happiness.

THE NATURE OF DEMOCRATIC INSTITUTIONS

Institutions are man-made, but they are not made by any one man. This is obviously true of democratic institutions, and it is the signal difference between democracy and dictatorship.

Dictatorships can achieve welfare for their subjects.
They can feed the starving, employ the idle, clothe and house the poor. We all know what satisfactions come from the gratification of these homely, elementary desires, and it is (and ever will be) almost irresistible to conclude that a government concerned with the welfare of its people must be fundamentally a good one.

But events have forced us to recognize that concern for welfare is not enough in a government. A subject may prosper from the kindliness of the dictator, but he remains a subject. How can he make sure that the dictator's disposition will continue kindly? The only hope he has is the forlorn hope of revolution. Perhaps men have a God-given right of revolution against oppressive governments. But this is a ghastly thought—that people can be oppressed until they can no longer bear it and must revolt. Democratic institutions offer something much finer than the right of revolution; that is, the right of evolution, the right peacably to develop in an orderly fashion the means of government that will accomplish the welfare of the people, and make sure this will always be the end of government as long as its institutions are preserved.

Therefore we conclude that physical welfare is not enough for us to ask of a government. Dictatorships can, and have, brought relief to people. Nor is peace enough, for dictatorships can, and have, remained at peace, while democracies can, and have, gone to war. The important question is, does a nation have the kind of governmental institutions that assures to an individual freedom of expression of his personality and the right to share in determining what the future shall be? Does the power to govern lie in one man, unchecked, unlimited, irresponsible, or in the wills of all people meeting in the determination of questions of common concern?

Without those settled, respected, and responsible institutions, functioning well, that pass from generation to generation, permanent in their spirit though changeable in their form, a government is not free. So the institutions of government are an indispensable and crucial part of a democratic system.
ARE AMERICAN INSTITUTIONS DEMOCRATIC?

Let us turn now to a third question. Are the institutions of American democracy truly democratic? Every citizen will have to answer this question for himself before the nation can proceed to the next question, an even more important one, namely, what must the direction of change be to achieve more democracy in the future?

First, it must be recognized that America has been more successful than any other nation in establishing legal limitations on the exercise of governmental power. Our governments originated with the conviction that there are some things no government can do, that there is a large “sphere of privacy” belonging to each individual which government cannot invade. The function of our courts, state and federal, has been to set limits beyond which no power can act. This function has been warmly supported by most of the people throughout our history, for America as a whole has thought of public acts in terms of powers. We are much more concerned when Congress passes public health measures to ask whether the constitutional power to do so belongs in Congress, than we are to inquire whether the problem is serious and must be solved. Constitutional limitations on power is a notion as deeply rooted in the American mind as are ideas of progress, freedom and religion. They are so familiar we don’t even mention them when we talk with our fellow-citizens. If limited government is the test of democracy, then American institutions are democratic, for they certainly are limited.

But this is not the only test of democracy. Others, probably more realistic ones, are such matters as these: How large a part of the population is privileged to vote? How many exercise their privilege? Is the vote free and uninfluenced? Are issues presented to the people in such a manner that they can express their will on questions they care about? Is the press free from government censorship? Are the radio, the newsreel, the pulpit likewise free? Is any man allowed to say what he pleases, when and where he pleases, without interference from the government or...
from such individuals as his employers, the politically powerful, and others? Is there political equality among races and among religions? Is there economic opportunity for all, as well as political opportunity? Of course there are other tests of democracy, but it is these with which we are concerned here, and clearly unless satisfactory answers can be given to them, we cannot say our institutions are democratic in the sense we would like them to be.

Now as we think about these problems we soon realize that there are levels and degrees of democracy. Some states discriminate against races and religions, some do not. In some places more people vote than in others. In some cities the vote is freer than in others. We do not have to look abroad to discover contrast and diversity in government. There is much of this in America, and we have great room for improvement within our borders before we can say we have reached the fullness of democracy.

Moreover there are levels and degrees of attitudes toward democracy as well as variations in the way democracy works. Some regions are more tolerant of free speech than others, some offer more opportunity for the poor. There is no general uniformity in the country on these matters. Until we have made progress in these problems we shall still have to ask, of the way American institutions work, for whom is it that they achieve democracy?

**OUR HISTORICAL EXPERIENCE**

Our historical experience as a nation, likewise, has exhibited different levels and degrees of democracy at different times, and the alarming thing as we view the present crisis is that there has not been a consistent development of our institutions toward more democracy. The life-history chart of American democracy is not a constant upward curve, but rather a series of ups and downs that gives no other hope for the future than that which comes from a reliance in the good sense and wisdom of the people.

Democracy cannot be legislated into a nation; it must arise from the life the people are living. The Declaration of Independence in 1776 expressed four principles Ameri-
cans had developed through the hundred years preceding, namely, that government should protect one citizen's property from other citizens, that government itself should not interfere with property rights, that government should depend on the consent of the governed or at least that part of the governed who had property, and that the liberty of the citizen demanded the least rather than the most government.

These principles were developed in practice in the years 1776-1789 under the Articles of Confederation, our first national constitution. But there was so much democracy that the business men, merchants and professional people of the country suffered; these groups met in Philadelphia in 1787 to draft the Constitution under which we still live. Its purpose was to set limits on the lengths to which democracy could go, but it did not make democracy impossible, as we shall see. It set up a national system with two characteristic limitations on government, the device of “division of powers,” by which executive, legislative and judicial authorities checked and balanced each other; and the principle of “dual federalism” by which national and state governments were both given certain specified powers, so that though there was a strong central government it could never exercise complete control over the states. Tyranny was to be legislated out of America forever by constitutional limitations, but the abuses of democracy were likewise to be guarded against by the strengthening of governmental power.

The Constitution of 1787 was neither the beginning nor the end of the American constitution; it was only the blueprint of a government, not a completed structure. It had still to be interpreted. It has been developed in four ways, by amendment, by legislation, by interpretation and by usage; and we must inquire whether, in developing its principles, the institutions it gave life have worked democratically. To do so it will help if we divide American history since 1789 into four periods.
The first period, 1789-1830, was one of vigorous national patriotism, during which the national government was built into a well-working machine. The end it designed to achieve was not particularly an extension of democracy within the country (that task was left to the states) but rather a standing among the nations of the world. “Hands-off” both North and South America was the policy which Monroe and John Quincy Adams forced upon European nations, promising in exchange that America would not interfere in their affairs, for example, would not aid the Greeks in their war for independence against the Turkish Empire. The federal government tried to unite all sections of the country by a great program of tariffs, road-building, national banks and a big navy. The question of democracy was of less national importance than the problem of welding together a continent of many loyalties into one supreme loyalty—the republic as a whole.

But nationalism brought with it a pride in American opportunity and equality; in every state there was a slow but sure movement removing the property requirements for voting. By 1840 nearly every white man in the country over 21 could vote; political equality was thus achieved, and the second period, 1830 to 1860, was the nearest approach to a true democratic state that the country has known. The inspiration for this came largely from the new west—from the settlers in Illinois, Iowa, Missouri, Wisconsin.

Though it had its greatest effect in the states, this movement also affected the national government. The first democratic president as we use the term was Andrew Jackson, elected in 1828, and a political party was formed to fight for the cause of democracy. Short terms and rotation in office were parts of the American’s creed.

In this second period we may say that American institutions were democratic. But as always it must be asked, democratic for whom? In many states of the union there were millions of black slaves, in several more there thousands of factory workers whose condition was little better. In the Middle West, democracy was a reality. The Civil War, growing partly out of these conflicts, ended with
such a total defeat of the Confederate States that the third period, 1865-1915, was concerned almost entirely with the northern half of the union. In this period the shape of our institutions did not change, but the way they worked did, and led to strange results indeed. These changes can be summarized thus: The power of the national government grew as that of the states declined; the courts protected the interests of large corporations but paid little regard to the public welfare; the doctrines and institutions of American democracy were used to defeat democratic legislation. This was not done against the will of the people, for the majority of the voters voted again and again for the leaders and measures that had these results. Municipal government became scandalously corrupt, but people had not sufficient interest to change or reform it. Of these years it must be said that our institutions did not work democratically, but they did work the way the majority of the people seemed to want them to.

THE PRESENT PICTURE

Since 1915 there have been remarkable changes, all accomplished within the letter of the constitution, but so important and so fundamental that they amount to a revolution in government. First, the activity of government has vastly increased so that there are few fields of thought or action into which it does not enter. Second, the power of the national government has been continually extended at the expense of the states.

This has, of course, changed the nature of federalism in America. It is hardly too much to say that the states are now obliged as never before to cooperate among themselves and with the national government if they wish to insure their continued existence. Had they been willing and ready to act in their new roles, they might have marked out for themselves duties and fields that would still have preserved a national-state federal relationship, but instead, confronted by expenses that demanded new sources of taxation and controlled by those who wished to use the state governments to protect local business from national competition, they have
recently reverted to practices common before 1787 of erecting tariff barriers against the free flow of goods and "ports of entry" against the free movement of people, competing among themselves for taxable income, and otherwise acting to develop localism within a state.

Thus American federalism has been changed by the growth of the national government above and in a different way by competition among states themselves. The end of these developments is not yet.

Within the national government likewise the balance among executive, legislative and judicial has been altered. The power and scope of the presidency has grown enormously until the office is hardly recognizable as the same occupied by Jackson or Polk or Cleveland. The tradition of three separate functions has broken down in practice.

These developments, all evident before 1915, have been accompanied by a change in attitude, likewise older than 1915 but likewise reaching its greatest strength since then, namely, the growing conviction that a re-statement of the terms of democracy is necessary. This has largely been a reaction against the domination of democratic institutions in the preceding 50 years by one region and one class, and while not attacking property itself or suggesting that the government should abdicate its role as the guarantor and protector of private property, the new interpreters of democracy have directed their wrath against wealth and its political power. Their attitude was thus expressed by one of their leading figures:

"The economic royalists complain that we seek to overthrow the institutions of America. What they really complain of is that we seek to take away their power. Our allegiance to American institutions requires the overthrow of this kind of power. In vain they seek to hide behind the flag and the Constitution. In their blindness they forget what the flag and the Constitution stand for. Now as always, the flag and the Constitution stand for democracy, not tyranny; for freedom, not subjection, and against a dictatorship by mob rule and the over-privileged alike."

The program of this group of today is a nationalistic, not a federalistic one; it has a well-developed welfare conscious-
ness but very little concern for forms or traditions of government. The spirit of this contemporary thought, added onto the structural alteration in the government, has been a product of many forces, not the least of which have been economic in their nature; and while they have given a new popularity to democracy they have also popularized the need for fundamental reforms in the structure of government that will contribute to efficiency and success in the solution of difficult problems.

In the light of this historical experience, what, then, is the answer to our question, are American institutions democratic? Obviously it is this, that for some of the people some of the time they have worked democratically, but that for others, at other times, they have not. The task before the country, especially as it faces the present crisis, is to strive to make these institutions work for more of the people more of the time. Is this going to be possible?

THE NEED FOR CONSTITUTIONAL REFORM

It is going to be possible if the American people wish it. As Chief Justice Hughes has pointed out, and indeed as the history of the nation proves, the people still have the power to shape the kind of government they wish. What is needed is not a change in institutions, but a change in attitudes. That is why it is so important in this present crisis to learn more about democracy so that the crisis will not destroy what we have.

The purpose here is only to raise these questions not to try to solve them. We must consider, then, three attitudes of the people generally, and question whether they ought to be changed.

THE ATTITUDE TOWARD CENTRALIZATION OF POWER

We have always opposed concentration of power in the hands of one officer or the centralization of power in the national government at the expense of the states. This is an attitude that has preserved the division of the union into states and has preserved also the whole set of conflicting powers that does not match very well the airplane, the radio,
the good roads and the railroads that have reduced the size of the nation so wonderfully. Therefore when one thinks about the issue of centralized power, he must ask himself whether there are governmental problems which can be exercised more effectively by a state than by the nation; whether there is a need for centralization of more power in the national government, to break down barriers that the state governments raise, or whether the opposite tendency, of decentralization and localization also existing today ought to be encouraged.

On these problems there is much confused and emotional writing. Generally we have assumed that a grant of powers means the surrender of rights, and thus have been led to ignore the states altogether in looking into the future. But all powers are not national, nor are state governments without possibilities for accomplishing the wishes of the people more directly than any other branch of the federal system. One extremely important issue in constitutional reform is the need for a clear statement of the relations of the citizen to the local and state governments, as well as to the national, and a better understanding of the role each can play in the preservation of democracy.

THE ATTITUDE TOWARD DIVISION OF POWERS

The old idea that legislative, executive and judicial powers are three separate and distinct things has in the last 50 years been vigorously attacked, yet in spite of this doubt and questioning there is still evident a strong disposition to insist upon preserving the division of powers according to traditional habits. We have to decide three questions: First, is it enough of a check upon power to state generally the functions of an administrative officer and leave the details of administration up to him? That is, do we hamper government and ourselves by setting a man to do a job and then failing to give him enough power to do it? Second, in a democracy should a court have the right to prevent an elected legislature from effecting the people's will by declaring its acts unconstitutional? Is judicial review by the courts a democratic process? Third, is there a need for a
complete re-statement of the relations among the three branches of the government, in the interests of increased democracy, that will wipe out artificial distinctions among them and bring them closer together?

THE ATTITUDE TOWARD THE “SPHERE OF PRIVACY”

The Tenth Amendment to the Constitution of 1787 provided that the powers not delegated to the United States nor prohibited to the states should be reserved to the states or to the people. This was a reflection of the distaste for government that the people of 1787 felt. It is a distaste that has never entirely disappeared among some of the people, yet the role of government has constantly increased. The right of the private citizen to control his own affairs without interference from government is at the base of this attitude, and to talk of it is to bring up the whole question of liberty and freedom.

Now the problem that arises here is whether in the future we must consign a larger area of operation to our institutions of government, and the answer one gives will largely depend upon whether he looks only to his own privacy or to that of every citizen in the nation. We can phrase it thus: Must we not change our attitudes toward privacy, so that we consider not our own privacy but the welfare of everyone? Must we not give to the government full powers to achieve the welfare of every citizen, even though it may mean a surrender of more and more of our own spheres of privacy?

These changes in attitude must come before any change in constitutional machinery can follow. And they must come from the people, debating these questions among themselves. They should come, and on this we would all agree, accompanied by a sturdy determination to preserve that spirit of limitation on governmental powers which is the original and precious distinction between dictatorship and democracy, even though the actual amount of this limitation be reduced far beyond anything we have ever before conceived.
THE PROBLEM OF DEFENSE AND WAR

One further problem must be mentioned. That is the effect of war on our democratic institutions. The United States since 1776 has engaged in seven major wars. Every one has had the effect of enlarging the scope of the government, for critical times demand critical measures. Some thoughtful and careful persons believe that every one of these wars, with the possible exception of the war of the American Revolution, has tended to undermine or destroy part of our democracy.

We well remember the harrying and imprisonment of pacifists, socialists and isolationists in 1917-1920. Whether or not we sympathize with the point of view these unfortunate persons represented, we acknowledge (to our credit) that they were treated in an undemocratic fashion. Such persecution must not happen here again. America once more faces what may become the abhorrent necessity of war. We see the activity of government again enlarging. Passions are aroused, and those who are trying to steer the difficult course of maintaining peace at home while assuring the victory of democracy abroad, find themselves uneasily between extremists of both sides.

We cannot foretell the outcome, nor will the American people be called upon to make the final decision, for this is a question that has never been submitted to the voters in the whole history of the American democracy and its wars. But with restraint and humility, and with confidence in the possibility of achieving a greater measure of democracy after the crisis has passed, we can all proclaim with every energy we have that this time there will be no persecution and no inquisition, that this time the institutions of American democracy will not be turned against any citizen of the land, to abuse his freedom of speech, his freedom of belief, or his freedom of person.