

E 457

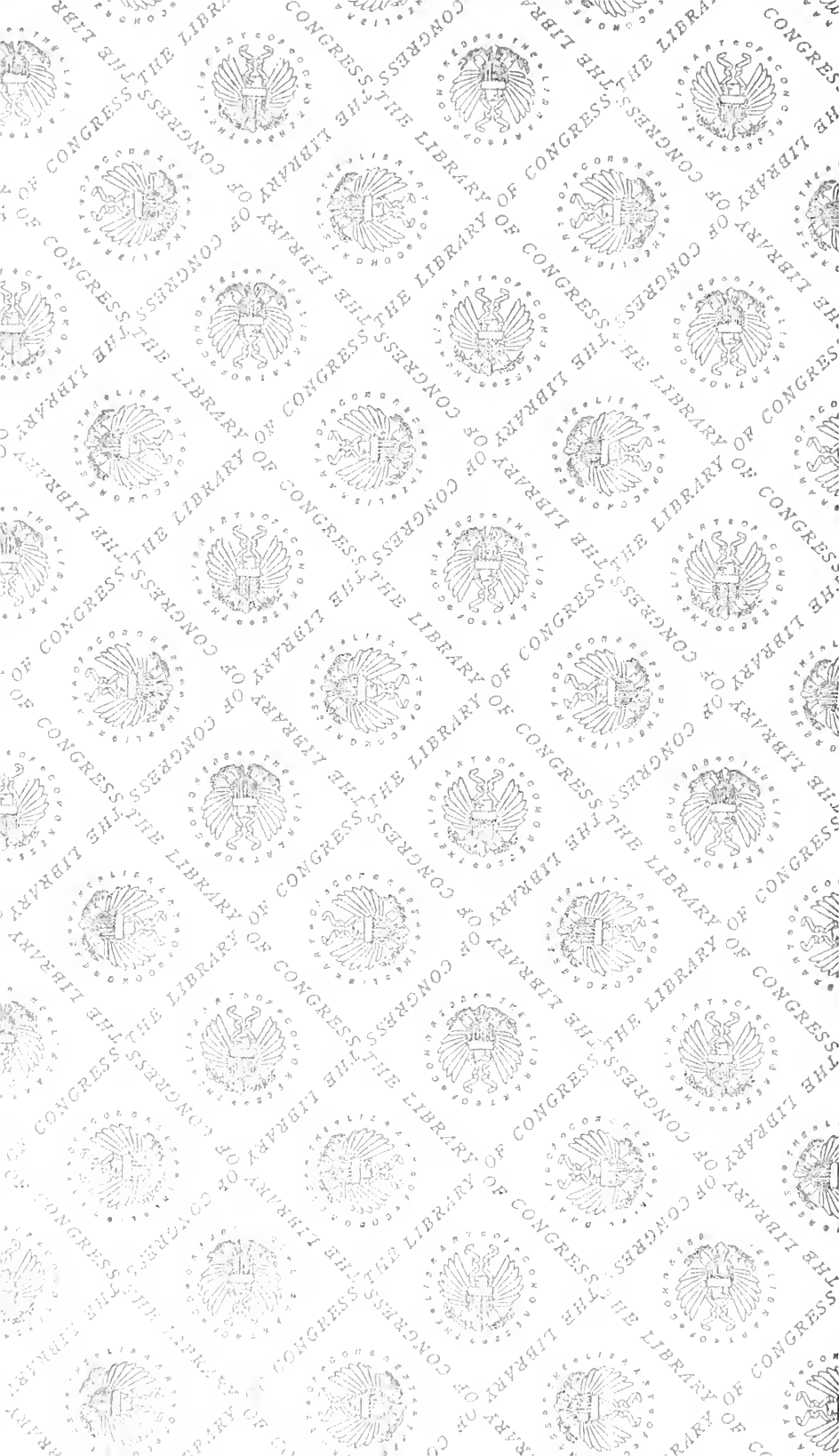
.8

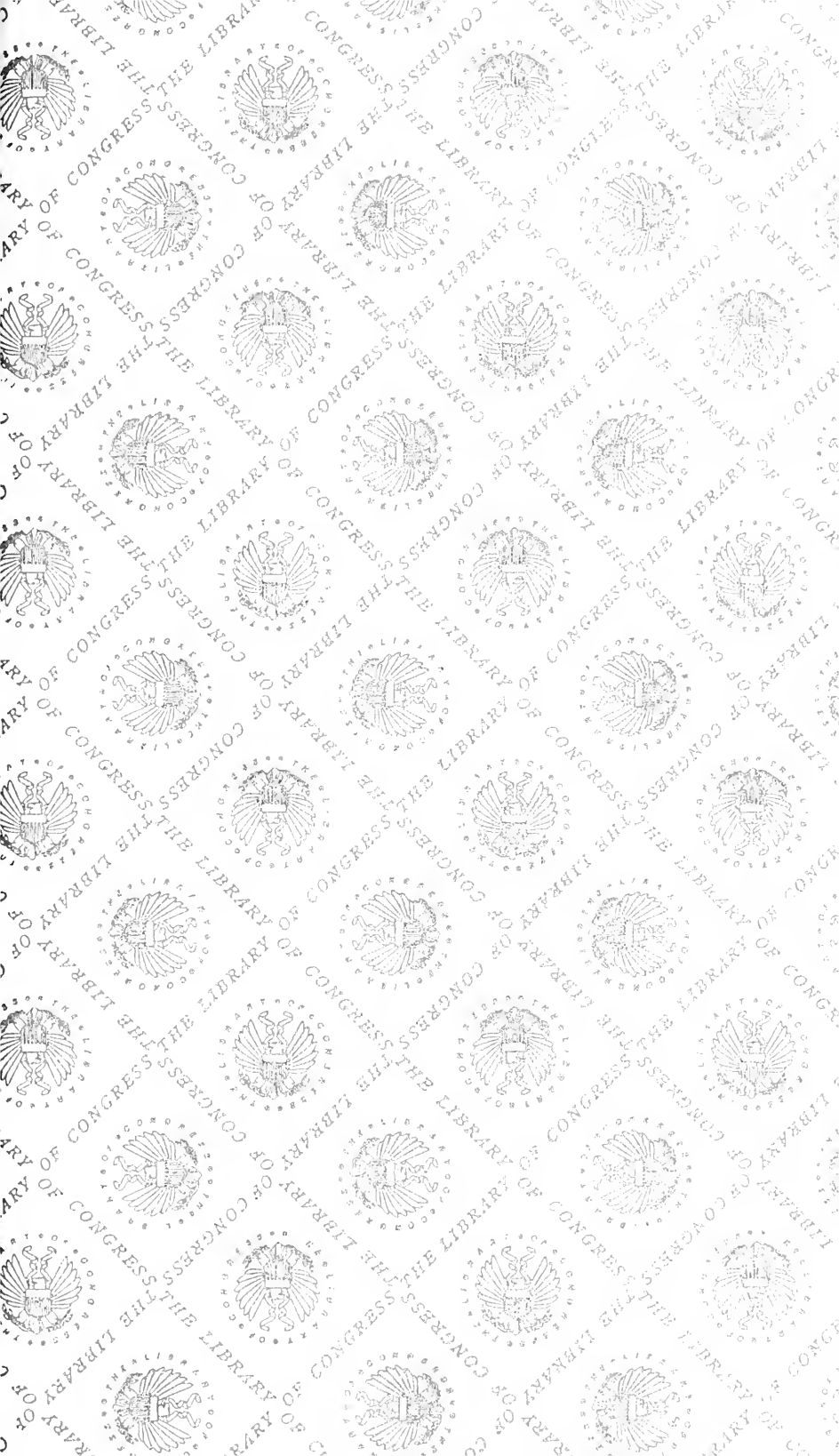
.L815

**LIBRARY OF CONGRESS**



00005971445







# The Democracy of Abraham Lincoln

---

ADDRESS BY  
HENRY CABOT LODGE  
BEFORE THE STUDENTS OF BOSTON  
UNIVERSITY SCHOOL OF LAW  
ON MARCH 14, 1913



PRESENTED BY MR. ROOT  
MAY 5, 1913.—Ordered to be printed



D. OF D.  
MAY 23 1913

# THE DEMOCRACY OF ABRAHAM LINCOLN.

---

Address to the students of Boston University School of Law, March 11, 1913.

By Hon. HENRY CABOT LODGE.

---

In his *History of Twenty-five Years* Sir Spencer Walpole says:

Yet, perhaps, of all the men born to the Anglo-Saxon race in the nineteenth century, Mr. Lincoln deserves the highest place in history. No man ever rose more quickly to the dignity of a great position. No man ever displayed more moderation in counsel, or more resolution in administration, or held a calmer or steadier course. Through the channel of difficulty and danger he kept his rudder true.

This is high praise, but I think that we may go a step further. As the nineteenth century recedes into the past it becomes constantly more apparent that the three great events of that period, the three great facts with a supreme influence upon western civilization and upon the world, were the preservation of the American Union, the consolidation of Germany, and the unification of Italy. With these three events the names of three men are indissolubly associated—Lincoln, Cavour, and Bismarck. They stand forth as embodying the cause of national unity in the United States, in Italy, and in Germany. They were the leaders, the directing minds in the mighty conflicts which produced the great results, and they loom ever larger and more distinct as the years pass by like high mountain peaks, which at a distance separate themselves from the confused masses of the range from which they rise. I have mentioned these three great men in the order in which, as it seems to me, they stand, and as I think they will stand when the final account is made up. But comparisons are needless. The greatness of Abraham Lincoln is admitted by the world, and his place in history is assured. Yet to us he has a significance and an importance which he can not have to other people. It is impossible to translate a great poem without losing in some degree the ineffable quality, the final perfection which it possesses in the language in which it was written. In its native speech the verse is wedded to the form and to the words, and has tones in its voice which only those who are "to the manner born" can hear. So Lincoln, whose life, rightly considered, was a great poem, speaks to his own people as he does to no other. What he was and what he did and said is all part of our national life and of our thoughts as well. We see in him the man who led in the battle which resulted in a united country, and we have watched his crescent fame as it has mounted ever higher with the incessant examination of his life and character. No record has ever leaped to light by which he could be shamed. Apart from all comparisons it is at least certain that he is the greatest figure yet produced by

---

<sup>1</sup> *History of Twenty-five Years*, vol. 11, p. 65.

modern democracy which began its onward march at the little bridge in Concord. If ever a man lived who understood and loved the people to whom he gave his life, Lincoln was that man. In him no one has a monopoly; he is not now the property of any sect or any party. His fame is the heritage of the people of the United States, and as Stanton said, standing by his deathbed, "He belongs to the ages."

For all these reasons, it seems to me, in these days of agitation and disquiet, when the fundamental principles upon which our Government rests and has always rested are assailed, that nothing could be more profitable and more enlightening than to know just what Lincoln's opinions were as to democracy and the true principles of free government. I am well aware that objection may be made to Lincoln, as an authority for our guidance, of the same character as the one brought against the framers of the Constitution, which is that he died nearly half a century ago and that, therefore, however excellent he was in his own day and generation, he is now out of date as a guide in public questions because all conditions have so completely changed. It is quite true that Lincoln, like Washington, never saw a telephone, an automobile, or a flying machine, and that economic conditions as well as those of business and finance have been radically altered since his day. But this is really an inept objection because the subject upon which we seek to know his thoughts concerns the relation of human nature to certain forms and principles of government among men, most of which were as familiar to the speculations of Plato and Aristotle as they are to us; some of which are older than recorded history while the very youngest have been known, discussed, and experimented with for centuries. So I think we may dismiss the suggestion that Lincoln is antiquated and realize that upon the principles of free government and the capabilities of human beings in that direction he is an authority as ancient as the Greek philosophers and as modern as the last young orator who has just discovered that this very comparative world is not abstractly and ideally perfect.

What, then, were the thoughts and opinions of Abraham Lincoln as to the principles upon which free and ordered popular government should rest? He alone can tell us. No one is vested with authority to proclaim to us what Lincoln thought or believed upon any subject. There is no high priest at that altar to utter oracles which no one else can question and which he alone can interpret. Lincoln's convictions and opinions are to be found in only one place, in his own speeches and writings, which, like his fame, belong to his countrymen and to mankind. Fortunately we need not grope about to discover his meaning. Few men who have ever lived and played a commanding part in the world have had the power of expressing their thoughts with greater clearness or in a style more pellucid and direct than Lincoln. Of him it may truly be said that his statements are demonstrations. You will search far before you will find a man who could state a proposition more irresistibly, leaving no avenue of escape, or who could use a more relentless logic than the President of the Civil War. We feel as we read his life that he had in him the nature of a poet, the imagination which pertains to the poetic nature and which was manifested not only in what he said and did but in his intuitive sympathy with all sorts and conditions of men. Combined with these attributes of the poetic



genius, which is as rare as it is impalpable, were qualities seldom found in that connection. He was an able lawyer and had the intellectual methods of the trained legal mind. He was also the practical man of affairs and the great statesman, looking at facts with undazzled eyes and molding men and events to suit his purpose. There is no occasion for guesswork, assertion, or speculation in regard to him when he turned away from the visions of the imagination to confront and deal with the hard problems of life and government, never to any man harder than they were to him.

Let us then examine his writings and speeches and see what light they throw upon the questions now subject to public discussion which relate to the Constitution of the United States and to the principles upon which that great instrument was based.

Let me remind you at the outset that I am going to deal only with the fundamental principles of government embodied in the Constitution and not at all with the many provisions which simply establish the machinery or mechanism by which the government is to be carried on. It is important to keep this distinction in mind, for it is frequently lost sight of and the ensuing confusion is deleterious to intelligent comprehension. The mechanism of government may be very important and a change in it may be either beneficent or unfortunate but it is not vital, whereas if the fundamental principles are altered, weakened, or abandoned the whole structure will come crashing to the ground. For example: To change the method of electing Senators may be harmful or beneficial yet it is in reality only a change of mechanism. But to abandon the equal representation of the States in the Senate is a vital and destructive change of principle, for the extinction of the States would mean the extinction of our governmental system and would involve in its ruin the basic principle of local self-government. The number of judges in the Supreme Court is a matter of machinery and expediency. But the appointment and tenure of those judges embody principles which go to the very root of all ordered and stable government.

It is on questions of principle alone that I would seek to learn the opinions of Lincoln, and before entering upon that inquiry let me define the questions upon which it seems to me well that we should seek his guidance at this time. They are two in number—representative government as involved in the agitation in favor of the compulsory initiative and referendum; and the independence of the courts, which is at stake in the demand for the recall of judges and the review of judicial decisions by popular vote. In an attempt to set forth Lincoln's opinions upon these questions it would be impossible to consider the arguments for or against these two propositions, for each one by itself requires a discussion of great length and elaboration. I shall make no effort to show that the compulsory initiative and referendum, so loudly demanded in the name of the people, is in essence a plan to secure not the rule of the people but arbitrary government by small, highly organized and irresponsible minorities of voters. Nor shall I try to demonstrate that the judicial recall and the review of judicial decisions by popular vote would not only, like the compulsory initiative and referendum, establish the power of highly organized minorities among the voters, but would also give us servile and subservient courts controlled by an outside force and therefore incapable of honestly interpreting the law and

doing justice between man and man. I will, however, pause long enough to point out that both schemes lead consciously or unconsciously to the same result. If successful, they would bring us to a government composed of the Executive and the voters. It is inevitable that this should be the case, for if you reduce to impotency the representative and judicial branches of the Government nothing remains but the voters and the Executive. The last conspicuous example of this kind of government was the second empire in France. By a vote of over seven millions to two hundred and fifty thousand Napoleon was made emperor. On May 8, 1870, his constitutional changes, continuing the Empire on a more liberal basis, were sustained by a vote of over seven millions to a million and a half, and within six months after this immense expression of popular approval his Empire had crumbled into ruins and he was himself a prisoner in Germany. The result of this form of direct democracy was not happy in that instance at least. And at bottom the question is between direct democracy on the one hand and self-limited democracy on the other. The first is very old, the second very new, dating, on a large scale at least, only from our own Constitution of 1787, which Lord Acton speaks of as an achievement in the way of self-limitation which men had up to that time regarded as impossible.

I have no intention of discussing the merits or demerits of the two systems, but the fact that direct democracy is old and our self-limited democracy is new must not be forgotten. When it is proposed to emasculate representative government, as was done by the third Napoleon, or to take from the courts their independence, it may be a change for the better, as its advocates contend, because almost anything human is within the bounds of possibility, but it is surely and beyond any doubt a return from a highly developed to a simpler and more primitive stage of thought and government. A system of government which consists of executive and people is probably the very first ever attempted by men. Among gregarious animals we find the herd and its leader, and that was the first form of government among primitive men, if we may trust the evidence of those tribes still extant in a low state of savagery who alone can give us an idea of the social and political condition of prehistoric man. Mr. Andrew Lang, in *Custom and Myth*, to illustrate a very different subject, says (p. 237):

Even among those democratic paupers, the Fuegians, "the doctor-wizard of each party has much influence over his companions." Among those other democrats, the Eskimo, a class of wizards called Angakuts, become "a kind of civil magistrates," because they can cause fine weather and can magically detect people who commit offenses. Thus the germs of rank in these cases are sown by the magic which is fetichism in action. Try the Zulus: "The heaven is the chief's;" he can call up clouds and storms, hence the sanction of his authority. In New Zealand every Rangatira has a supernatural power. If he touches an article, no one else dares to approach it for fear of terrible supernatural consequences. A head chief is "taped an inch thick and perfectly unapproachable." Magical power abides in and emanates from him. By this superstition an aristocracy is formed and property (the property, at least, of the aristocracy) is secured. Among the red Indians, as Schoolcraft says, "priests and jugglers are the only persons that make war and have a voice in the sale of the land." Mr. E. W. Robertson says much the same thing about early Scotland. If Odin was not a god with the gifts of a medicine man and did not owe his chiefship to his talent for dealing with magic, he is greatly maligned. The Irish Brehons also sanctioned legal decisions by magical devices, afterwards condemned by the church. Among the Zulus "the Itonyo (spirit) dwells with the great man; he who dreams is the chief of the village." The chief alone can "read in the vessel of divination." The Kaneka chiefs are medicine men.

The chiefs here described derive their authority from the popular belief in their magic powers, but the germ of government which is apparent is that of people and executive. Out of these wizards and medicine men, these chiefs protected by the "tabu," came the king, as Mr. Frazer shows in his "Early History of the Kingship." The machinery was constantly elaborated and perfected as the centuries passed and the king steadily absorbed more power, as was inevitable, but the system remained in essence the executive and the people. On the other hand, we may study experiments in direct democracy in Athens and in Rome more than 2,000 years ago and at a later time in some of the mediæval Italian cities. This examination will reveal the fact that representative government on a large scale is a modern development originating in England, and also that while the people began long ago to place limitations on the once unrestrained power of the crown or the kingship it was in our Constitution that a people for the first time put limitations upon themselves, which has hitherto been considered an evidence of unusual intelligence and of a high civilization. I have ventured upon this digression because it seems to me important to emphasize the fact that these efforts to get rid of representative government and the independence of the judiciary, whether good or bad, are not attempts to advance from what we now have, but to revert to earlier and more primitive forms of social and political organizations. This point of reversion to earlier forms so far as it relates to the courts has never been more vividly and strongly stated than by Mr. Roosevelt in an article upon the Vice Presidential candidates, which he contributed to the Review of Reviews in November, 1896 (p. 295):

The men who object to what they style "government by injunction" are, as regards the essential principles of government, in hearty sympathy with their remote skin-clad ancestors, who lived in caves, fought one another with stone-headed axes, and ate the mammoth and woolly rhinoceros. They are interesting as representing a geological survival, but they are dangerous whenever there is the least chance of their making the principles of this ages-buried past living factors in our present life. They are not in sympathy with men of good minds and sound civic morality.

Furthermore, the Chicago convention attacked the Supreme Court. Again, this represents a species of atavism—that is, of recurrence to the ways of thought of remote barbarian ancestors. Savages do not like an independent and upright judiciary. They want the judge to decide their way, and if he does not they want to behead him. The Populists experience much the same emotions when they realize that the judiciary stands between them and plunder.

Let us now examine what Lincoln said or wrote and try to determine whether he stood for the new or the old, for self-limited or for direct and unlimited democracy with especial reference to the two points of government by representation and judicial independence. On one most memorable occasion Lincoln told the world what the Government was for which the people whom he led were pouring out their treasure and offering up their lives. I will not use my own words to describe what he then said but those of an impartial English historian.

One of them (these "beautiful cemeteries"), on the field of Gettysburg, will be dear to Anglo-Saxons for all time, because it inspired the famous two minutes' speech which is, perhaps, the most perfect example in our language of what such a speech on such an occasion should be.<sup>1</sup>

<sup>1</sup> The History of Twenty-five Years, by Sir Spencer Walpole. Vol. II, p. 67.

I will read to you the Gettysburg speech thus characterized by Sir Spencer Walpole. Only a portion relates to our subject, but that speech can not be read or repeated too often by Americans, and there never has been a time since the hour of its utterance when it should be more reverently and thoughtfully pondered by all who love their country than in these days now passing over us. It was on the 19th of November, 1863, a little more than four months after the great battle, that he spoke as follows in dedicating the national cemetery at Gettysburg:

Four score and seven years ago our fathers brought forth on this continent a new Nation, conceived in liberty, and dedicated to the proposition that all men are created free and equal.

Now we are engaged in a great civil war, testing whether that Nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battle field of that war. We have come to dedicate a portion of that field as the final resting place for those who here gave their lives that the Nation might live. It is altogether fitting and proper that we should do this.

But, in a larger sense, we can not dedicate, we can not consecrate, we can not hallow this ground. The brave men, living and dead, who struggled here have consecrated it far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here. It is for us, the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion; that we here highly resolve that these dead shall not have died in vain; that this Nation, under God, shall have a new birth of freedom; and that government of the people, by the people, for the people, shall not perish from the earth.

The last sentence is the one which concerns us here. What Government did he refer to in those closing lines as the one for which the soldiers died and to the preservation of which he asked his countrymen to dedicate themselves? It was the Government of the United States. It could have been no other. His own title was President of the United States; the uniform which the soldiers wore and the flag they followed were the uniform and the flag of the United States of America. He defined this Government to which he gave his life as a "government of the people, by the people and for the people." This famous definition, familiar in our mouths as household words, was applied to the Government of the United States as created, established, and conducted by and under the Constitution adopted in 1789. With the exception of the three war amendments, and those just adopted, establishing the income tax and the election of Senators by popular vote, it is the same Constitution and the same Government to-day that it was in November, 1863. Lincoln thought it a popular government. He did not regard it as a government by a President, or by a Congress, or by judges, but as a government of, by, and for the people, and in his usual fashion he stated his proposition so clearly and with such finality that there is no escape from his meaning. We might well be content to stop here and, accepting Lincoln's definition, stand upon his broad assertion of the character of our Government and look with suspicion upon those who in the name of the people seek to tear down that Constitution which has given us what he declared to be in the fullest sense a government of the people. Even if we could conceive that he was mistaken, I for one should still feel that it would be—

But it is neither necessary nor desirable to stop with the Gettysburg speech, for it is important to learn, if we can, in more detail what Lincoln thought of the limitations established by the Constitution with especial reference to the principle of representation and the power of the courts. Very early in his career, when he was not yet 27 years of age, he said in an address before the Young Men's Lyceum at Springfield, Ill., on January 27, 1837:

We find ourselves under the government of a system of political institutions conducting more essentially to the ends of civil and religious liberty than any of which the history of former times tells us. \* \* \* Theirs was the task (and nobly they performed it) to possess themselves, and through themselves us, of this goodly land, and to uprear upon its hills and its valleys a political edifice of liberty and equal rights; 'tis ours only to transmit these—the former unprofaned by the foot of an invader, the latter undecayed by the lapse of time and untorn by usurpation—to the latest generation that fate shall permit the world to know. \* \* \*

At what point, then, is the approach to danger to be expected? I answer: If it ever reach us, it must spring up among us; it can not come from abroad. If destruction be our lot, we must ourselves be its author and finisher. As a nation of freemen we must live through all time, or die by suicide.

In these sentences we see at once that the great style of the Gettysburg address and of the second inaugural is still undeveloped, that the power of expression so remarkable in later years has not yet been found; but the conviction as to the character of our Government, which attained its final form at Gettysburg, is here and the closing words warning us that destruction of our Government can come only from ourselves demand our attention now as insistently as when they were uttered by an obscure young man in Illinois looking far into the future and thereupon passed over unheeded by a careless world.

Such, then, was Lincoln's belief in the character of our Government at the outset of life, and such it continued to the end, as I shall show later. Upon the two particular points which we have now under consideration he had, owing to the circumstances of his time, a good deal to say about the courts and very little in express form about representative government, because nobody in his day questioned the representative system. But representative government rests upon certain broad principles in regard to which Lincoln spoke clearly and decisively. The basic theory of representative government is that the representative body represents all the people, and that a majority of that body represents a majority of all the people. To the majority in Congress the power of action is committed and it is so guarded as to exclude so far as human ingenuity can do it any opportunity for the control of the Government by an organized minority either among the voters or their representatives. It is these very provisions for securing majority rule which have led to the development of such devices as the compulsory initiative and referendum in order that organized minorities of voters may gain a power of control which they could not obtain under a purely representative government.

Having thus established majority rule through the representative system, the framers of the Constitution, with their deep-rooted distrust of uncontrolled power anywhere, then proceeded to put limitations upon the power of the majority. They were well aware that a majority of the voters at any given moment did not necessarily represent the enduring will of the people. They knew equally well that in the end the real will of the people must be absolute, but they

desired that there should be room for deliberation and for second thought and that the rights of minorities and of individuals should be so far as possible protected and secured. Hence the famous limitations of the Constitution. I need not rehearse them all; the most vital are those embodied in the first 10 amendments which constitute a bill of rights, the rights of men, or human rights, and any violation of those rights is forbidden to Congress and to the majority. As restraints upon the majority they gave the Executive a veto, which raised the necessary majority for action to two-thirds, while upon the courts they conferred by implication authority to make any law void and of no effect if it was in violation of the general principles laid down by the Constitution. Upon this point of limitation upon the majority, whether of voters or representatives, which is the essence of our constitutional system of representation, Lincoln spoke in a manner which can not be misunderstood. He said in the first inaugural:

If by the mere force of numbers a majority should deprive a minority of any clearly written constitutional right, it might, in a moral point of view justify revolution—certainly would if such a right were a vital one. But such is not the case. All the vital rights of minorities and of individuals are so plainly assured to them by affirmations and negations, guarantees and prohibitions, in the Constitution that controversies never arise concerning them. \* \* \*

A majority held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people.

Nothing could be clearer than these sentences. In Lincoln's opinion the violation of a vital constitutional right was moral justification for revolution, and the last sentence gives a definition of free and real popular government upon which it would be difficult indeed to improve.

I have just said that one of the checks placed upon the power of the majority was the authority which of necessity devolved upon the courts to declare any law, which in their opinion violated the Constitution, unconstitutional and therefore void. It is this judicial power which has led to the present movement to destroy the independence of the courts by subjecting the judges to the recall and their decisions to review at the ballot box. On this point Lincoln spoke often and with great elaboration. He did so because the famous Dred Scott case was a very burning issue in the years immediately preceding the Civil War. If an opinion was ever delivered by a court which justified resistance to or an attack upon the judicial authority it was this one known by the name of a poor negro—Dred Scott. The opinion against which the conscience of men revolted did not decide the case. It was an obiter dictum. It was delivered solely for the purpose of settling a great political question by pronouncement from the Supreme Court. There was no disguise as to what was intended. Mr. Buchanan, informed as to what was coming after his arrival in Washington, announced in his inaugural that the question of slavery in the Territories would soon be disposed of by the Supreme Court. The wise practice of the Supreme Court is to decline jurisdiction of political questions, holding that such questions belong solely to Congress and the Executive. In this case the court deliberately traveled outside the record in order to speak upon a purely political question which then divided the whole country. For such action there is no defense.

Born of the passions of the slavery contest, the Dred Scott case stands in our history as a flagrant attempt by the Supreme Court to usurp power. There has been nothing like it before or since. The lesson of that gigantic blunder was learned thoroughly and will never be forgotten by the court at least. The attack upon the dictum of the court began with the masterly dissenting opinion of Mr. Justice Curtis, which wrecked Taney's argument both in the law and the facts. From the courtroom the attack spread over the country and the utterances of the Chief Justice were assailed with all the bitterness characteristic of that period and defended with equal fervor by those who supported slavery and who declared that a refusal to accept the decision was tantamount to treason. Lincoln, as one of the leaders of the new Republican Party, was obliged to deal with it. He did so fully and thoroughly. All that he said deserves careful study, for there is no more admirable analysis of the powers of the courts and of the attitude which should be taken in regard to them. I shall make no excuse for quoting what he said, at length, and I may add that his utterances on this great question required neither explanation nor commentary from me or anyone else. I will begin, however, with a protest against a bill for the reorganization of the judiciary, signed by Lincoln as a member of the Illinois Legislature. These resolutions, which Lincoln drafted<sup>1</sup> show what his general views were as to the courts many years before the Dred Scott decision. The important portion of them runs as follows:

For reasons thus presented, and for others no less apparent, the undersigned can not assent to the passage of the bill, or permit it to become a law, without this evidence of their disapprobation; and they now protest against the reorganization of the judiciary, because: (1) It violates the great principles of free government by subjecting the judiciary to the legislature; (2) it is a fatal blow at the independence of the judges and the constitutional term of their office; (3) it is a measure not asked for or wished for by the people; (4) it will greatly increase the expense of our courts, or else greatly diminish their utility; (5) it will give our courts a political and partisan character, thereby impairing public confidence in their decisions; (6) it will impair our standing with other States and the world. \* \* \*

(Signed by 35 members, among whom was Abraham Lincoln.)

It will be observed that the first two objections state in the strongest terms the principle of the independence of the judiciary and declare that this great principle is violated by subjecting the judiciary to the legislature, the representatives of the people. In this case it happened to be the legislature, but the principle is that the courts should not be subjected to any outside control or influence, whether that control comes from the executive, the legislature, or the voters.

Holding these principles, Lincoln 16 years later was brought face to face with the Dred Scott opinion, and this is how he dealt with it, a little more than three months after it was delivered, in a speech at Springfield, Ill., on June 26, 1857:

He (Senator Douglas) denounces all who question the correctness of that decision, as offering violent resistance to it. But who resists it? Who has, in spite of the decision, declared Dred Scott free and resisted the authority of his master over him?

Judicial decisions have two uses—first, to absolutely determine the case decided, and secondly, to indicate to the public how other similar cases will be decided when they arise. For the latter use, they are called "precedents" and "authorities."

We believe as much as Judge Douglas (perhaps more) in obedience to, and respect for, the judicial department of the Government. We think its decisions on constitutional

<sup>1</sup> Life of Lincoln: Hay and Nicolay, vol. 1, p. 164.

*questions, when fully settled, should control not only the particular cases decided, but the general policy of the country, subject to be disturbed only by amendments of the Constitution as provided in that instrument itself. More than this would be revolution.* But we think the Dred Scott decision is erroneous. We know the court that made it has often overruled its own decisions, and we shall do what we can to have it overrule this. We offer no resistance to it.

Judicial decisions are of greater or less authority as precedents according to circumstances. That this should be so accords both with common sense and the customary understanding of the legal profession.

If this important decision had been made by the unanimous concurrence of the judges, and without any apparent partisan bias, and in accordance with legal public expectation and with the steady practice of the departments throughout our history and had been in no part based on assumed historical facts, which are not really true; or, if wanting in some of these, it had been before the court more than once, and had there been affirmed or reaffirmed through a course of years, it then might be, perhaps would be, factious, nay, even revolutionary, not to acquiesce in it as a precedent.

But when, as is true, we find it wanting in all these claims to the public confidence, it is not resistance, it is not factious, it is not even disrespectful, to treat it as not having yet quite established a settled doctrine for the country.

Contrast these calm words, uttered under the greatest provocation, with the violent attacks now made on the courts for two or three decisions which are in no respect political and which are as nothing compared to the momentous issue involved in the Dred Scott case where the freedom of human beings and the right of the people to decide upon slavery in the Territories were at stake. There is not a proposition which is not stated with all Lincoln's unrivaled lucidity and there is not the faintest suggestion of breaking down the power of the courts or of taking from them their independence.

A year later, just before the great debate with Douglas, but when that debate had in reality begun, Lincoln, at Chicago on July 10, 1858, again took up the Dred Scott case and spoke as follows:

I have expressed heretofore, and I now repeat, my opposition to the Dred Scott decision; but I should be allowed to state the nature of that opposition, and I ask your indulgence while I do so. What is fairly implied by the term Judge Douglas has used: "Resistance to the decision"? I do not resist it. If I wanted to take Dred Scott from his master, I would be interfering with property, and that terrible difficulty that Judge Douglas speaks of, of interfering with property, would arise. But I am doing no such thing as that; all that I am doing is refusing to obey it as a political rule. If I were in Congress, and a vote should come up on a question of whether slavery should be prohibited in a new territory, in spite of the Dred Scott decision I would vote that it should.

That is what I would do. Judge Douglas said last night that before the decision he might advance his opinion, and it might be contrary to the decision when it was made; but after it was made he would abide by it until it was reversed. Just so. We let this property abide by the decision, but we will try to reverse that decision. We will try to put it where Judge Douglas would not object, for he says he will obey it until it is reversed. Somebody has to reverse that decision, since it is made; and we mean to reverse it, and we mean to do it peaceably.

What are the uses of decisions of courts? They have two uses. As rules of property they have two uses. First, they decide upon the question before the court. They decide in this case that Dred Scott is a slave. Nobody resists that. Not only that, but they say to everybody else that persons standing just as Dred Scott stands are as he is. That is, they say that when a question comes up upon another person, it will be so decided again, unless the court decides in another way, unless the court overrules its decision. Well, we mean to do what we can to have the court decide the other way. That is one thing we mean to try to do.

Again, in a speech at Springfield, Ill., on July 17, 1858, he said:

Now as to the Dred Scott decision, for upon that he makes his last point at me. He boldly takes ground in favor of that decision. This is one-half the onslaught and one-third of the entire plan of the campaign. I am opposed to that decision in a certain sense, but not in the sense which he puts on it. I say that in so far as it decided in favor of Dred Scott's master and against Dred Scott and his family I do not propose to disturb or resist the decision.



I never have proposed to do any such thing. I think that in respect for judicial authority my humble history would not suffer in comparison with that of Judge Douglas. He would have the citizens conform his vote to that decision; the Member of Congress, his; the President, his use of the veto power. He would make it a rule of political action for the people and all the departments of the Government. I would not. By resisting it as a political rule I disturb no right of property, create no disorder, excite no mobs.

In some notes for speeches, which the editors date October 1, 1858 (?), we find this fragment, which is of great interest because it shows how strongly Lincoln felt that the Dred Scott case could be dealt with and set aside under the Constitution without amending that instrument or seeking to break down the independence of the courts. The note runs as follows:

That burlesque upon judicial decisions and slander and profanation upon the honored names and sacred history of republican America must be overruled and expunged from the books of authority.

To give the victory to the right, not bloody bullets, but peaceful ballots only are necessary. Thanks to our good old Constitution and the organization under it, these alone are necessary. It only needs that every right-thinking man shall go to the polls and without fear or prejudice vote as he thinks.

Again, in the joint debate at Quincy, Ill., on October 13, 1858, he said:

We do not propose that when Dred Scott has been decided to be a slave by the court we, as a mob, will decide him to be free. We do not propose that, when any other one or one thousand shall be decided by that court to be slaves, we will in any violent way disturb the rights of property thus settled; but we nevertheless do oppose that decision as a political rule which shall be binding on the voter to vote for nobody who thinks it wrong, which shall be binding on the Members of Congress or the President to favor no measure that does not actually concur with the principles of that decision. We do not propose to be bound by it as a political rule in that way, because we think it lays the foundation not merely of enlarging and spreading out what we consider an evil, but it lays the foundation for spreading that evil into the States themselves. We propose so resisting it as to have it revised if we can and a new judicial rule established upon this subject.

I will add this: That if there be any man who does not believe that slavery is wrong in the three aspects which I have mentioned, or in any one of them, that man is misplaced and ought to leave us. While, on the other hand, if there be any man in the Republican Party who is impatient over the necessity springing from its actual presence, and is impatient of the constitutional guaranties thrown around it, and would act in disregard of these, he too is misplaced, standing with us. He will find his place somewhere else; for we have a due regard, so far as we are capable of understanding them, for all these things. This, gentlemen, as well as I can give it, is a plain statement of our principles in all their enormity.

He discussed the great question many times, but I will make only one more quotation, the passage in the first inaugural, where on the eve of secession and civil war he gave expression, every word weighed and meditated, to his opinions and intentions. On that solemn occasion he spoke thus of the courts:

I do not forget the position, assumed by some, that constitutional questions are to be decided by the Supreme Court; nor do I deny that such decisions must be binding, in any case, upon the parties to a suit, as to the object of that suit, while they are also entitled to very high respect and consideration in all parallel cases by all other departments of the Government. And while it is obviously possible that such decisions may be erroneous in any given case, still the evil effect following it, being limited to that particular case, with the chance that it may be overruled, and never become a precedent for other cases, can better be borne than could the evils of a different practice. At the same time, the candid citizen must confess that if the policy of the Government, upon vital questions affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made, in ordinary litigation between the parties in personal actions, the people will have ceased to be their own rulers, having to that extent practically resigned their Gov-

ernment into the hands of the eminent tribunal. Nor is there in this view any assault upon the courts or the judges. It is a duty from which they may not shrink to decide cases properly brought before them, and it is no fault of theirs if others seek to turn their decisions to political purposes.

From these extracts we may see that Lincoln held that the courts had no right to lay down a rule of political action and that if they did so no one was bound by it. This is, indeed, the present position of the court itself. He said that no one should resist the decision in the Dred Scott case, but that it was the duty of all who believed that doctrine contrary to freedom and to American principles to seek to have it overruled—not reviewed by the voters at the ballot box, or changed by the recall of its authors, but simply overruled by the court itself. Again no one will dissent. But beyond this he did not go. On the contrary, he upheld the judicial authority within its proper domain, and there is no suggestion to be found, even under that bitter provocation, of any attempt to make the courts subservient to any outside power by any such device as a recall. Still less is there any thought of reversing the decision by a popular vote. On the contrary, at Quincy, speaking to a popular audience, he said, as you remember:

We do not propose that when Dred Scott has been decided to be a slave by the court, we, as a mob, will decide him to be free.

There is no need to comment further upon the passages which have just been quoted. It is enough for me to say that Lincoln's discussion of the Dred Scott case seems to me to contain the strongest arguments for an independent judiciary that can be found anywhere. We may also be sure, I think, that Lincoln did not forget in his righteous indignation at the Dred Scott opinion that every slave who set foot on English soil became a free man by Lord Mansfield's decision in *Somerset's case* (1772) or that slavery had been ended in Massachusetts by a decision of the Supreme Court of the State in 1783 under the sentence, that "all men are born free and equal," inserted in the constitution of that State for that precise purpose by John Lowell.

Passing now from the particular to the general, let me by a few brief quotations show you what Lincoln thought of our Government under the Constitution as a whole. In a speech at Columbus, Ohio, on September 16, 1859, he said:

I believe there is a genuine popular sovereignty. I think a definition of genuine popular sovereignty, in the abstract, would be about this: That each man shall do precisely as he pleases with himself, and with all those things which exclusively concern him. Applied to government, this principle would be, that a general government shall do all those things which pertain to it, and all the local governments shall do precisely as they please in respect to those matters which exclusively concern them. I understand that this Government of the United States under which we live is based upon this principle; and I am misunderstood if it is supposed that I have any war to make upon that principle.

In his address at Cooper Institute, in New York, on February 27, 1860, he said:

Now, and here, let me guard a little against being misunderstood. I do not mean to say we are bound to follow implicitly in whatever our fathers did. To do so would be to discard all the lights of current experience—to reject all progress, all improvement. What I do say is that if we would supplant the opinions and policy of our fathers in any case, we should do so upon evidence so conclusive, and argument so clear, that even their great authority, fairly considered and weighed, can not stand; and most surely not in a case whereof we ourselves declare they understood the question better than we.

In his reply to the mayor of Philadelphia, on February 21, 1861, he spoke as follows:

Your worthy mayor has expressed the wish, in which I join with him, that it were convenient for me to remain in your city long enough to consult your merchants and manufacturers; or, as it were, to listen to those breathings rising within the consecrated walls wherein the Constitution of the United States, and, I will add, the Declaration of Independence, were originally framed and adopted. I assure you and your mayor that I had hoped on this occasion, and upon all occasions during my life, that I shall do nothing inconsistent with the teachings of those holy and most sacred walls. All my political welfare has been in favor of the teachings that came forth from these sacred walls. May my right hand forget its cunning and my tongue cleave to the roof of my mouth if ever I prove false to those teachings.

So he spoke at the threshold of the great conflict. Listen to him now as he spoke three years later, with the war nearing its close and when the hand of fate could almost be heard knocking at his door. On August 18, 1864, in an address to the One hundred and sixty-fourth Ohio Regiment, he said:

We have, as all will agree, a free Government, where every man has a right to be equal with every other man. In this great struggle, this form of government and every form of human right is endangered if our enemies succeed. There is more involved in this contest than is realized by everyone. There is involved in this struggle the question whether your children and my children shall enjoy the privileges we have enjoyed. I say this in order to impress upon you, if you are not already so impressed, that no small matter should divert us from our great purpose.

There may be some inequalities in the practical application of our system. It is fair that each man shall pay taxes in exact proportion to the value of his property. But if we should wait before collecting a tax to adjust the taxes upon each man in exact proportion with every other man, we should never collect any tax at all. There may be mistakes made sometimes; things may be done wrong, while the officers of the Government do all they can to prevent mistakes. But I beg of you, as citizens of this great Republic, not to let your minds be carried off from the great work we have before us.

He said, on August 22, 1864, in his address to the One hundred and sixty-sixth Ohio Regiment:

It is not merely for to-day, but for all time to come, that we should perpetuate for our children's children that great and free Government which we have enjoyed all our lives. I beg you to remember this, not merely for my sake, but for yours. I happen, temporarily, to occupy this White House. I am a living witness that any one of your children may look to come here as my father's child has. It is in order that each one of you may have, through this free Government which we have enjoyed, an open field and a fair chance for your industry, enterprise, and intelligence; that you may all have equal privileges in the race of life, with all its desirable human aspirations. It is for this the struggle should be maintained, that we may not lose our birthright—not only for one, but for two or three years. The Nation is worth fighting for, to secure such an inestimable jewel.

And on August 31, 1864, in an address to the One hundred and forty-eighth Ohio Regiment, he said:

But this Government must be preserved in spite of the acts of any man or set of men. It is worthy of your every effort. Nowhere in the world is presented a Government of so much liberty and equality. To the humblest and poorest amongst us are held out the highest privileges and positions. The present moment finds me at the White House, yet there is as good a chance for your children there as there was for my father's.

With these noble words, uttered as the dark shadows of the past were fleeing away and the light of the coming victory was beginning to shine upon him, let us leave him. As at Gettysburg, over the graves of the dead soldiers, he declared that the great battle had been fought in order that "Government of the people, by the people, for the people" should not perish from the earth, so now to the living

soldiers he said that nowhere in the world was presented a "Government of so much liberty and equality." Thus, at the close, just at the beginning when he was a young man entirely unknown beyond the confines of his village, did he speak of the Government of the United States under the Constitution. Thus he described his conception of democracy, and that conception he found fulfilled in the Constitution of the United States and in the great principles ordered freedom and guarded rights which are there embodied.

There is one other point alluded to by Lincoln when he defines "genuine popular government" which does not directly concern the subject I have been discussing, but which is of quite equal importance and upon which I wish to say a few words in closing. The framers of the Constitution made one great contribution to the science of government in the application of the principle of federation upon a scale and in a manner never before attempted. A large part of the Constitution is devoted to the arrangement and adjustment of the relations between the States and the General Government. Upon the construction of those relations, as we know, parties divided and our history largely turned for more than seventy years. The contest was between the rights of the States on the one hand and the powers of the Central Government on the other. The conflict culminated in the Civil War and in the effort of certain States to break up the Union. The result of the war was the preservation of the Union and the defeat of secession. But secession or the separation of the States, is not the only way in which the Union can be destroyed. The other, and no less effective, method of destroying the Union is by the abolition of the States, which could be attained by reducing them to merely nominal divisions and taking from them those powers and duties reserved to them by the Constitution and which alone make them living organisms. The first danger ended forever at Appomattox. The second is threatening us, and in no obscure fashion, to-day. The growth of the power of the Central Government, together with its constant assumption of new duties is in a degree inevitable and in a less degree, no doubt, desirable. But this inevitable movement is always quite rapid enough and should be retarded rather than accelerated. It is not, however, to this tendency of development that I now refer, but to something much graver and which is in its nature absolutely destructive.

There is a widespread agitation in favor of having Presidents nominated as party candidates, not by the people of the State each State being allotted the number of votes to which it is entitled by the number of party votes cast at a previous election, but by all the members of the party throughout the country without reference to State lines. It is further proposed, and a constitutional amendment with that object in view was pending in the Senate at the last session, to have the President elected by the votes of all the people instead of by the votes of the people of the States, each State having two votes as a State and additional votes based on population. An amendment to that effect, proposed as an addition to another constitutional amendment, was defeated in the Senate a few weeks ago by a narrow majority.

A President so nominated and elected would not be the President of the United States, but of the American Republic, or President of

the Americans, as Louis Napoleon was styled Emperor of the French, having been chosen by a universal plebiscite. Party principles, party organization, party responsibility, would all disappear. Perhaps in this connection it is not amiss to remember that, in a eulogy upon Henry Clay, delivered in the State House at Springfield, Ill., on July 16, 1852, Lincoln said:

A free people in times of peace and quiet—when pressed by no common danger—naturally divide into parties. At such times the man who is of neither party is not, can not be, of any consequence. Mr. Clay, therefore, was of a party.

As usual, in discussing any subject, he laid his unerring finger upon a vital point. The destruction of parties and party organizations would reduce the unorganized voters, acting simply as individuals, to a condition of helplessness. We should no longer have great organizations, with declared principles and established traditions, which could be held to strict responsibility, but simply followers of certain chiefs. Those chiefs would be self-made, presidential candidates with personal manifestoes after the familiar fashion of South American dictators.

But these objections, serious as they are, sink into insignificance when compared with the far graver results which lie behind these propositions. To nominate and elect Presidents by a vote of the whole people, without reference to State lines, would be a step, and a long step, toward the extinction of the States. That would mean the enormous exaltation of the Executive power, to which all these movements for the destruction of the Constitution alike tend. The abolition or degradation of the States would mean a real imperialism and not the imaginary imperialism about which many excellent people were quite needlessly distressed when we took possession of certain islands after the Spanish War. We might continue to call our territorial divisions States, and their chief executive officers governors, but names are nothing and with the States stripped of all power they would be in reality provinces and their rulers prefects appointed in Washington. The abolition of the States would mean the loss or the ruin of the great principle of local self-government, which lies at the very root of free popular government and of true democracy. The States, within their limitations and in the exercise of their proper powers, are the sheet anchor which keeps the ship of State from drifting helplessly upon the rocks of empire and of personal autocratic rule, where so many great nations have met untimely wreck.

These are no fanciful dangers, no alarms conjured up to arrest improvement and advance. Actual measures leading to the results I have described are being pressed and advocated. It is a less obvious, a slower, a more insidious way of destroying the Union of States than by open war, but if successful it is equally certain in its results. We should pause long and think well before we enter upon such changes as these, all the more perilous because they are demanded in the name of the people and look harmless, perhaps, to those who do not stop to consider them.

We are confronted to-day with the gravest questions which the American people have been called upon to decide since 1860. I do not mean questions of social or economic policy, nor issues of war

or peace or foreign relations. I mean questions now pressing upon us which involve the very fabric of our Constitution, under which freedom, order, and prosperity have gone with us hand in hand. It is a time for careful thought, a time to tear aside the veils of speech and come straight to the substance of things, to facts and principles. Let us not at a time like this and in the presence of such questions be the slaves of words and phrases. In the Book of Judges it is written:

Then said they unto him, "Say now 'Shibboleth.'" And he said "Sibboleth"; for he could not frame to pronounce it right. Then they took him and slew him at the passages of the Jordan.

There has been too much of this of late, too much dependence on how loudly a man could shout certain words and how he pronounced the "Shibboleth" which was proposed to him. Let us get away from words and phrases and come down to facts and deeds. Before we begin to revolutionize our Constitution and its principles, let us know well what that Constitution is, what it means, what it has accomplished, and whither the changes so noisily urged will lead us.

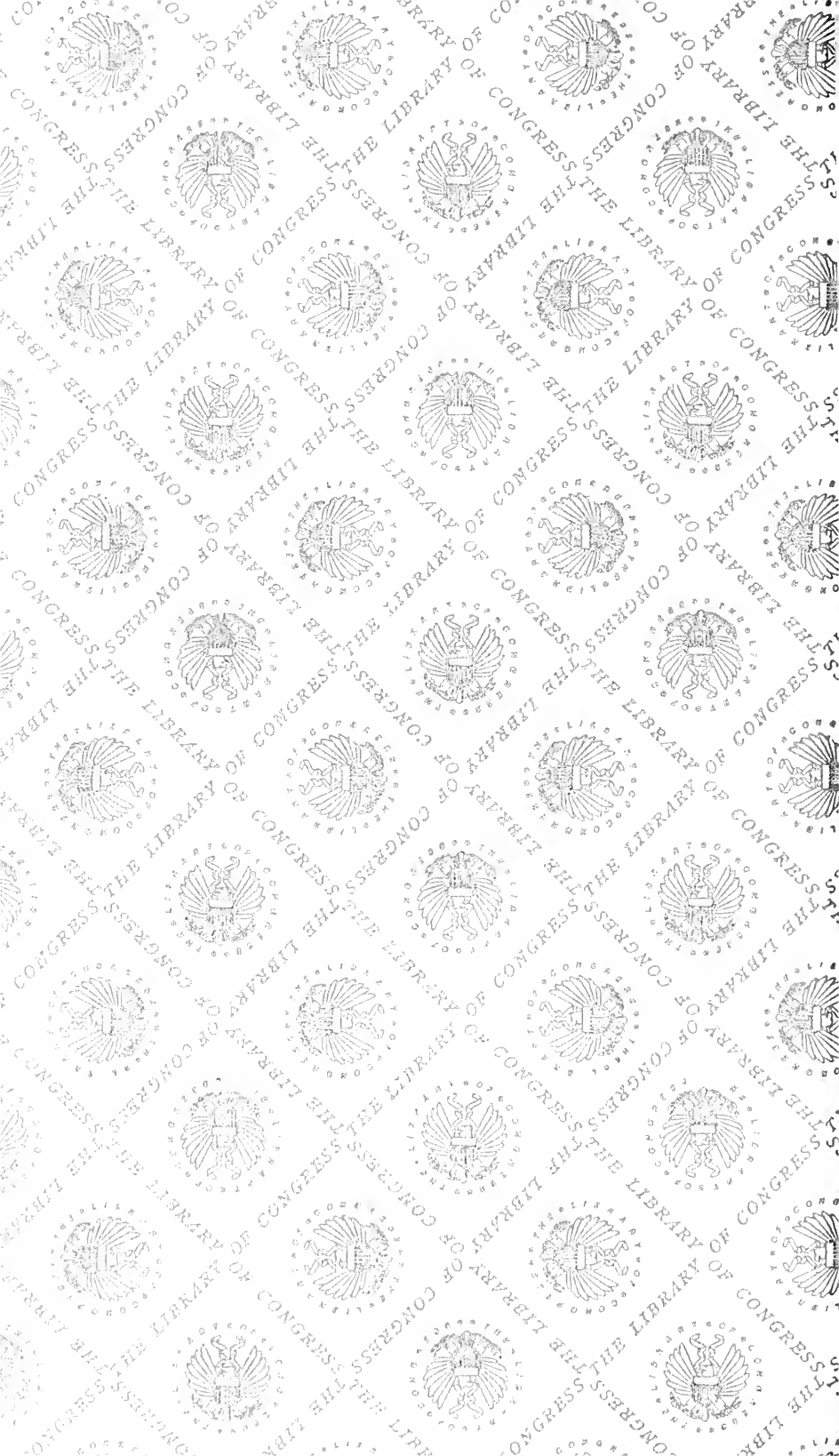
In his message to Congress on July 4, 1861, speaking of the officers of the Regular Army from the seceding States who had remained true to the Government of the Union, Lincoln said:

This is the patriotic instinct of the plain people. They understand, without an argument, that the destroying of the Government which was made by Washington means no good to them.

I have faith that the people to-day feel as they did then. I am sure that when they shall understand whither they are being led they will know that to impair or to destroy the Government which Washington made and Lincoln saved "means no good to them."











WERT  
BOOKBINDING  
Crafts Inc. Pa.  
March - April 1985  
WeleDus - 8p. 00

