

# Who Decides? The Founders' Forgotten System of Checks and Balances

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*"There is not a syllable in the constitution, that makes a decision of the judiciary – of its own force, and without regard to its correctness – binding upon any body, either upon the executive, or the people."*

JCRMC  
PACKET

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That's from Lysander Spooner, reminding us of an essential, but long-forgotten fundamental principle repeatedly affirmed by the Framers: **The Constitution is supreme**, not acts of Congress, not the views of the president, and not opinions of the courts.

That brings us to a crucial question: **Who decides when the Constitution is violated?**

According to the Founders, the answer was simple – everyone. And that's the key to understanding what real "checks and balances" under the Constitution are all about.

## The Judiciary's Limited, Constrained Role

Thomas Jefferson strongly rejected the idea that the judiciary had exclusive and final authority to decide all constitutional questions. Writing to William Torrance, he made this clear:

*"Certainly there is not a word in the constitution which has given that power to them more than to the Executive or Legislative branches."*

Most people today think that **all** constitutional questions are **only** answered by the Supreme Court. And – as a result, their view is not that the Constitution means what the Constitution says, or what the founders and ratifiers told us it means, but instead, the constitution means what the supreme court says it means – until it changes its mind.

But that's not even close to the system of the founders under the constitution. It's much closer to the British system they fought a long, bloody war to secede from.

In a letter to William Charles Jarvis, Jefferson called that system an oligarchy:

*"You seem ... to consider the judges as the ultimate arbiters of all constitutional questions: a very dangerous doctrine indeed and one which would place us under the despotism of an Oligarchy."*

## Constitutional Supremacy

To understand this further, we have to go to the text of the Constitution, the supremacy clause in Article VI, Clause 2, which explicitly states:

*"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."*

The supremacy clause in the Constitution does not declare that **all** federal laws are supreme – only those made **pursuant to the Constitution**. That means any federal act that goes beyond the powers delegated to the government is, by definition, not supreme law at all.

Alexander Hamilton made this point crystal clear in *Federalist 33*:

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*"it EXPRESSLY confines this supremacy to laws made PURSUANT TO THE CONSTITUTION."*

As Michael Stokes Paulsen and Luke Paulsen explain:

*"All branches of government are equally bound by the Constitution. No branch of the federal government – not the Congress, not the President, not even the Supreme Court – can legitimately act in ways contrary to the words of the Constitution."*

This means that no single part of government has the final say over what the Constitution allows or forbids. Instead, every branch has an obligation to follow and uphold the Constitution as written.

*"Indeed, Article VI requires that all government officials – legislative, executive, and judicial, state and federal – 'shall be bound by Oath or Affirmation, to support this Constitution.'"*

That oath is a direct acknowledgment that all public officials serve under the Constitution, not above it. It is the supreme law, and no institution has the power to twist or redefine it for its own purposes.

*"Thus, the idea of a written constitution is closely tied to the idea of constitutional supremacy: In America, no branch of government is supreme. The government as a whole is not supreme. The Constitution is supreme."*

This is the essence of **true constitutional government** – not rule by any single branch, but by the clear words of the Constitution itself.

### **Corruption**

The Founders understood that the judiciary – like all branches of government – was made up of people, and people are prone to the temptations of power. Judges, despite their robes and lofty titles, were no exception.

Thomas Jefferson warned that judges, like other officials, could be swayed by ambition, partisanship, and the desire to expand their own authority. He put it bluntly:

*"Our judges are as honest as other men, and not more so. They have, with others, the same passions for party, for power, and the privileges of their corps. Their maxim is 'boni judicis est ampliare jurisdictionem,' and their power the more dangerous as they are in office for life, and not responsible, as the other functionaries are, to the elective control. The Constitution has erected no such single tribunal knowing that, to whatever hands confided, with the corruptions of time & party its members would become despots."*

Jefferson understood that concentrated power, especially in an unelected judiciary, would inevitably lead to despotism. Judges could claim more and more authority, slowly eroding constitutional limits under the guise of interpretation.

James Madison reinforced this concern in his *Report of 1800*. He pointed out that it wasn't just the executive or legislative branches that could overstep their bounds – the judiciary, too, could usurp power beyond what was constitutionally granted:

*"The resolution supposes that dangerous powers not delegated, may not only be usurped and executed by the other departments, but that the Judicial Department also may exercise or sanction dangerous powers beyond the grant of the Constitution."*

Madison's warning was clear: there is no built-in immunity to judicial overreach.

Just as a president might claim powers not delegated, or Congress might pass unconstitutional laws, the courts, too, could sanction violations of the Constitution by expanding power beyond what was delegated.

**Spooner: No Intrinsic Authority**

Spooner reinforced this principle, pointing out what should be painfully obvious – a court opinion does not become legitimate simply because a judge issued it.:

*"If a judicial decision be according to law, it is binding; if not, not. An unconstitutional judicial decision is no more binding, than an unconstitutional legislative enactment"*

He continued, echoing Jefferson's warnings from decades earlier, exposing the dangerous implications of treating judicial opinions as automatically binding:

*"If a judicial decision contrary to the constitution, were binding simply because it were a judicial decision, the judiciary could constitutionally make themselves absolute sovereigns at once.*

*A judicial decision, as such, has therefore no intrinsic authority at all; its constitutional authority rests wholly upon its being in accordance with the constitution."*

Spooner took this argument to its logical conclusion, warning of the inevitable result if the judiciary's opinions were treated as supreme, final and absolute, no matter what:

*"If we take the decision as authority for the meaning of the constitution, all decisions will of necessity be constitutional, and the judges are of course, constitutionally speaking, absolute despots."*

This is precisely the danger the Founders sought to avoid. Allowing the judiciary to be the sole arbiter of the Constitution's meaning transforms it into an oligarchical ruling class. Instead of serving as a check on power, the courts become a source of power itself – one that, if left unchecked, would destroy the very foundations of liberty.

**Coequal and Independent Branches**

Because of these maxims of government and human nature, the founders set up a system of "co-equal" branches, rather than giving one branch any level of superiority over the others. Jefferson again explained that the constitution:

*"has more wisely made all the departments co-equal and co-sovereign within themselves."*

Jefferson continued:

*"the constitution, in keeping the three departments distinct & independant, restrains the authority of the judges to judiciary organs, as it does the executive & legislative, to executive and legislative organs."*

As James Madison explained in *Federalist* 49, the equality and independence of the three federal branches means no branch is the boss over any of the others, and none has the power under the constitution to compel the others to do or not do anything.

*"The several departments being perfectly co-ordinate by the terms of their common commission, none of them, it is evident, can pretend to an exclusive or superior right of settling the boundaries between their respective powers."*

Michael Stokes Paulsen summarized Madison's view:

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*"That is as categorical a rejection of one-branch interpretive supremacy, and as unequivocal an embrace of interpretive coordinacy, as it is possible to imagine. It entails a rejection of judicial supremacy every bit as much as a rejection of congressional supremacy or executive supremacy in constitutional interpretation."*

### **No FORCE or WILL**

Judges issue opinions, they don't make laws. And they don't have an enforcement arm, either. Alexander Hamilton explained it like this in *Federalist* 78:

*"The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments."*

Simply put, the judiciary has no army, no police force, and no power to compel obedience beyond the willingness of the other branches to respect its opinions. This was no accident – it was an intentional design of the Constitution to ensure that courts could not become tyrannical.

Hamilton reinforced this point in *Federalist* 81, emphasizing that the courts are incapable of imposing their will without external enforcement:

*"This may be inferred with certainty, from the general nature of the judicial power, from the objects to which it relates, from the manner in which it is exercised, from its comparative weakness, and from its total incapacity to support its usurpations by force."*

Carson Holloway addressed this issue, explaining Hamilton's perspective:

*"Hamilton's assurance here depends on the assumption that the executive might legitimately decide **not** to lend its 'force' to support a judicial decision that could be considered an 'encroachment' or a 'usurpation.' This, in turn, supposes that the executive may make its own determination on such questions."*

### **The Duty of Each Branch**

For the founders, it was a **duty** to follow the constitution – even if other branches disagree. John Jay, the first Chief Justice, stated:

*"That by the Constitution of the United States the government thereof is divided into three distinct and independent branches and that it is the duty of each to abstain from and to oppose encroachments on either."*

This principle was essential to maintaining the balance of power under the Constitution. John Jay strongly reaffirmed this in 1801:

*"To secure the Liberties of the People and the legitimate Rights of their Government, against Encroachment and usurpation, it has from Experience been found necessary to divide the powers of Government into three distinct and independent Departments – aggregately considered, they possess all the power of Government; and are always in Capacity to defend their respective authorities against improper assumptions of Power"*

Thomas Jefferson explained how this worked in practice:

*"Each department is truly independent of the others, and has an equal right to decide for itself what is the meaning of the Constitution in the cases submitted to its action."*

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Jefferson specifically pointed to how he responded to the Sedition Act, explaining that both the judiciary and the executive had a **duty** to interpret the Constitution for themselves:

*"You seem to think it devolved on the judges to decide on the validity of the sedition law. but nothing in the constitution has given them a right to decide for the executive, more than to the Executive to decide for them. both magistracies are equally independant in the sphere of action assigned to them. the judges, believing the law constitutional, had a right to pass a sentence of fine and imprisonment; because that power was placed in their hands by the constitution. but the Executive, believing the law to be unconstitutional, was bound to remit the execution of it; because that power has been confided to him by the constitution. that instrument meant that it's co-ordinate branches should be checks on each other."*

In short, the executive was not required to enforce what it viewed as an unconstitutional law just because the judiciary upheld it. Each branch had an obligation to act within its authority and reject unconstitutional actions by the others.

Jefferson warned that allowing the judiciary to dictate constitutional meaning to the other branches would create judicial despotism:

*"the opinion which gives to the judges the right to decide what laws are constitutional, and what not, not only for themselves in their own sphere of action, but for the legislature & executive also in their spheres, would make the judiciary a despotic branch."*

#### **The Real Final Arbiter: The States**

The Founders agreed on a fundamental principle: all power flows from the people of the several states – not from the federal government. The federal government is merely their agent, created to exercise only those powers delegated to it.

Given this, it would have been **absurd** for that agent to have the final say over the limits of its own power.

James Madison made this point explicitly in the Report of 1800:

*"The states then being the parties to the constitutional compact, and in their sovereign capacity, it follows of necessity, that there can be no tribunal above their authority, to decide in the last resort, whether the compact made by them be violated."*

Madison left no doubt – there was no higher authority than the people of the several states themselves when it came to determining whether the Constitution had been violated. This applied to every branch of the federal government:

*"the ultimate right of the parties to the constitution, to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority, as well as by another; by the judiciary, as well as by the executive, or the legislature."*

But it was Thomas Jefferson who gave the most forceful and unambiguous statement on the subject in the Kentucky Resolutions of 1798. He warned of the danger in allowing the federal government to be the sole judge of its own powers:

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*"That the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers"*

This was the core issue – if the federal government, through any of its branches, had the sole authority to decide the limits of its own power, then there were, in reality, no limits at all. Instead, Jefferson laid out the true constitutional remedy:

*"As in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions, as of the mode and measure of redress."*

Under the Constitution, no single branch holds absolute authority over its meaning. Each branch, and ultimately the people of the states themselves, must judge constitutional violations and act accordingly. **This is the true system of checks and balances** created and implemented by the Founders.



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## Adolf Hitler, Chancellor of Nazi Germany (1933-45)

[August 22, 1939]

*"Who, after all, speaks today of the annihilation of the Armenians?"*

My decision to attack Poland was arrived at last spring. Originally, I feared that the political constellation would compel me to strike simultaneously at England, Russia, France, and Poland. Even this risk would have had to be taken.

Ever since the autumn of 1938, and because I realized that Japan would not join us unconditionally and that Mussolini is threatened by that nit-wit of a king and the treasonable scoundrel of a crown prince, I decided to go with Stalin.

In the last analysis, there are only three great statesmen in the world, Stalin, I, and Mussolini. Mussolini is the weakest, for he has been unable to break the power of either the crown or the church. Stalin and I are the only ones who envisage the future and nothing but the future. Accordingly, I shall in a few weeks stretch out my hand to Stalin at the common German-Russian frontier and undertake the redistribution of the world with him.

Our strength consists in our speed and in our brutality. Genghis Khan led millions of women and children to slaughter -- with premeditation and a happy heart. History sees in him solely the founder of a state. It's a matter of indifference to me what a weak western European civilization will say about me.

I have issued the command -- and I'll have anybody who utters but one word of criticism executed by a firing squad -- that our war aim does not consist in reaching certain lines, but in the physical destruction of the enemy. Accordingly, I have placed my death-head formations in readiness -- for the present only in the East -- with orders to them to send to death mercilessly and without compassion, men, women, and children of Polish derivation and language. Only thus shall we gain the living space (*Lebensraum*) which we need. Who, after all, speaks today of the annihilation of the Armenians?

Kevork B. Bardakjian, *Hitler and the Armenian Genocide* (Cambridge, Massachusetts: The Zoryan Institute, 1985).

Armenian National Institute

The text above is the English version of the German document handed to Louis P. Lochner in Berlin. It first appeared in Lochner's *What About Germany?* (New York: Dodd, Mead & Co., 1942), pp. 1-4. The Nuremberg Tribunal later identified the document as L-3 or Exhibit USA-28. Two other versions of the same document appear in Appendices II and III. For the German original cf. *Akten zur Deutschen Auswärtigen Politik 1918-1945*, Serie D, Band VII, (Baden-Baden, 1956), pp. 171-172.

Recent attacks on religion in Europe show that the land that nursed Christianity to maturity is in desperate need of re-evangelization.

**D**espite all the jabbering about “diversity” and “inclusivity” in the Church and world, Catholics in the United States (and especially Catholic theologians) have become somewhat insular and provincial. When I began studying theology in the 1970s and 1980s, translations of works by European theologians were commonplace and common stock of Catholic publishers. Today, they rarely appear, while most Catholic publishers trade either in gauzy spirituality pixie dust or some version of “do-it-yourself” self-improvement with a splash of holy water.

I make these observations in view of two stories I picked up from Europe recently that did not get much U.S. circulation, though they should have.

**In Poland**, a petition was dropped on Parliament to outlaw Confession for anybody under the age of 18. Its rationale, ostensibly, is to protect minors from sexual abuse. It calls the confessional a medieval control instrument.

One should not forget that there is a virulent minority in Poland that is anti-Catholic. It's the usual assortment of sexual dissenters, especially led by women ashamed that Poland is almost the last country to protect unborn human life and old Communists looking somehow to get back that “we're in charge” feeling. It also has a few self-hating Catholics in the mix.

The Constitution requires Parliament to address petitions validly submitted to it. A similar petition was previously disqualified on a technicality.

Since even the Communists imposed on Poland by the Russians usually shied away from out-and-out confrontation with the Church, don't expect the current secularizing Brussels sycophants around Prime Minister Donald Tusk to rush and grab this third rail. Already, they're at least admitting that freedom of religion, guaranteed in the Polish Constitution and especially their beloved “EU Treaties,” would stand in the way. After all, if one cannot confess, one in theory cannot receive Communion or other sacraments of the living, at least in certain circumstances.

But the fact that this effort was mounted even in (admittedly declining) Catholic Poland says several things. One, that Poland remains the “new Ireland,” the target of an elite within and without the country to separate the national culture from its Catholic roots. Second, that the failure of the Church—especially under Pope Francis—to do some “controlled burning” to clean out the brush, chaff, and weeds of predator priests stymies ecclesiastical reform and erodes overall trust. What got Rupnik and McCarrick punished was not their sexual escapades but their absolution of “accomplices” in Confession.

The Poles have at least one thing going for them: this petition came from the usual anti-Catholic suspects. That's better than in Germany where, as I observed last April, it was a commission within the Archdiocese of Freiburg itself that wanted to forbid Confession to minors until they are of Confirmation age (in that diocese, around 15). Ostensibly to prevent abuse, it also rekindled the old '70s agitation that won't go away: eliminate First Confession before First Communion.

**The other European story** I thought worth noting was the decision by the state Church of Sweden to close down (at least for the winter) several parishes on Gotland Island (that big island off the east coast of Sweden) because...they use fossil fuel heating and can't be converted. One of them is Romakloster, a 13th-century Cistercian ruin among the glories of Swedish Catholicism expropriated by the state when Lutheranism was imposed by the crown.

It's not clear to me how many of these old churches actually *are* places of “worship” as opposed to tourist sites or cultural venues. (Old churches have good acoustics, in-built in their day to promote preaching.

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Besides, they provide more aesthetically appealing backdrops than '70s schlock.) In either case, it's clear that, in Sweden, the real incense must be offered to the climate gods. No doubt the state would tell you (through its ministry of religion, aka the "Church of Sweden") that the *true* God is no doubt pleased that people have foregone worship in order not to sully "our common home" of Mother Earth. It's the perfect bookend to the image of Pastor Tomas Ericsson, more Swedish state employee than man of God, in Ingmar Bergman's 1963 classic film *Winter Light*.

It's just another erosion of our Genesis heritage that subsumes human exceptionalism (which includes his *right and duty*—"right and just"—to worship the true God) into some overall environmental fundamentalism. Less spoken is the underlying idea, evidenced in America by governors who during Covid declared worship "unessential," that Caesar either speaks for or has no obligation to reckon with his interlocutor in dividing up the "renderings."

**Anti-religion recognizes** the symbolic value to society of edifices that look like churches on the outside but have been "repurposed"—temporarily or permanently—to entertainment centers, theaters or concert halls, discos, and restaurants. "Temporary sacrality" makes as much sense as "somewhat pregnant." But it does send the message—a very anti-Christian, anti-Incarnational message—that the Eternal has no abiding place here in our temporal immanence. That thought ought to be considered by all our "responsible steward" bishops engaged in self-congratulation over the numbers of churches they "consolidated" or closed.

If anybody has any doubts where this is headed (since anti-Catholicism is more advanced and often more overt in Europe than here), consider the great observation Cardinal Gerhard Müller made in his book *True and False Reform*. Müller notes that our day may very well see the heresy of apocatastasis (universal salvation) fulfilled when the Antichrist receives his doctorate of theology *honoris causa* from the Catholic theology faculty at the University of Tübingen.

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## GREAT CONVERSION STORIES

### Hosokawa Gracia

John Janaro

Hosokawa Gracia is renowned in Japanese history as a heroic noblewoman who was killed during the 16<sup>th</sup>-century Sengoku ("Warring States") Period. Less well known, however, is that Gracia became a Christian during those dramatic years.

It is difficult to even begin to enter into the mentality of the Japanese nobility of that era. Literate, cultured, and brave, they prized honor above all things, and it gave them a kind of openness and magnanimity. Thus they welcomed the Jesuit missionaries who came in the mid-16<sup>th</sup> century and gave them freedom to preach the Gospel. Through the Jesuits' witness to the truth of Jesus Christ, the Japanese encountered the loving God who creates every person and takes flesh to save them and bring them to eternal life. This was so "new" to them that the Jesuits had to search carefully for the Japanese words to properly express it, and yet the people's hearts were drawn by the grace of the Holy Spirit, and many stayed with the fathers, were catechized and baptized, and began to adhere fervently to Christ and witness to others. Even the nobility were sympathetic to the new faith, and some became Christians themselves.

Yet there were also difficulties that would lead to the outlawing of Christianity at the end of the Sengoku Period and the establishment of centralized power by the early 17<sup>th</sup> century. Japanese dedication to honor above all things easily slipped into pride, which bore in its wake betrayal, violence, and different kinds of ritualized cruelty. When the Church came to Japan and began to grow, it also entered into a society of complex political claims, shifting alliances, and striving for power. Christianity eventually found itself in the crosshairs of this conflict for power.

Gracia found herself stuck in the middle of Sengoku-era violence long before she heard of Christ. Born Akechi Tamako in 1563 to a Samurai family, she was beautiful and intelligent, but also sensitive and prone to depression. At about fifteen, she

married the equally young Tadaoki Hosokawa to secure a family alliance, but the couple fell deeply in love. Sadly, Tamako's father rebelled against his overlord, and his betrayal made his daughter's marriage problematic for the loyal Hosokawas. Tadaoki hid her in seclusion in the mountains for two years. When she was allowed to return, Tadaoki felt the need to confine her to the palace to protect her from the lustful intentions of the nearby overlord. Tamako, a lively and energetic young woman, was thus forced to live in lonely seclusion during this violent period. She became deeply depressed, and questioned the meaning of suffering in ways her own understanding of Buddhism couldn't answer.

Nevertheless, she still had her husband, and soon she began to look forward to his frequent visits home for more than companionship. Tadaoki had become friends with the Christian Samurai Blessed Justo Takayama Ukon, who spoke to him about Jesus and the Catholic faith. Tadaoki was interested in the new religion, though not inclined to convert. But he shared in detail with his wife the conversations he had with Ukon. Thus, the Gospel reached her heart, and she desired greatly to meet the priests at the Catholic church. Finally, on a Buddhist holiday in 1587, she slipped past the guards with her servant Kojiju and visited the church. She spoke with the Catholic priests and requested baptism, but they couldn't give her the sacrament because her circumstances prevented her from telling them who she was. Returning to the palace, Tamako communicated with the Jesuits through Kojiju, which resulted in Kojiju's own conversion. Eventually the priests instructed Kojiju, now Maria, in the ritual, and told the servant that she herself could baptize her mistress. Thus, Tamako, taking the baptismal name Gracia, received the sacrament that would conform her to Christ and his Church and sustain her until her death in 1600, probably at the hands of a family guard who feared that she would be taken hostage by the army of an opposing faction.

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## Hobson's Choice

By Jeff Thomas

International Man

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Thomas Hobson owned a large stable of horses in Cambridge, England in the early seventeenth century. As he had some forty horses in his stable, prospective customers assumed that they'd maximise their possibility of choice there, if they needed a mount. However, each potential customer was told by Hobson that he could rent the horse in the stall closest to the door, or rent none at all. This approach allowed Hobson the ability to assure that none of his horses would ever be overused. But, in the bargain, it gave him control over his clientele.

Henry Ford used Hobson's choice very effectively. He created his inspired "car for the multitude" in 1908. His market share increased enormously. Then, in 1913, he discovered that that black paint dried more quickly than any other colour. Black cars could be produced more quickly and were therefore more profitable. So, beginning in 1914, he eliminated all colour choices for his popular Model T cars. From then on, he said, "Any customer can have a car in any color as long as it is black."

Like Mr. Hobson, he gained control over his customers by minimizing their choices.

It's important to recognize here that neither Messrs. Hobson nor Ford had the ability to implement such restrictions when they first started their businesses. It was only after they had secured a significant market share *through a free market*, that they were in a position to make that market *less* free.

In this, we see an important aspect of the concept of government. The United States began as a Republic, but downgraded quickly into a democracy, then downgraded further, over time, into a quasi-collectivist democracy and is now moving quickly into a fully-collectivist state.

But, this is not a new idea, nor a new effort. Some 2400 years ago, Greece came up with the idea of a republic – a state in which the *freedom of choice of the individual* was paramount. Laws were minimal and, as long as he followed those basic laws, he was free to do as he pleased.

Ancient Rome was the same. After a state of prosperity due to increasing production, a republic was formed, but it was soon downgraded into a democracy, then later became an empire, then collectivism set in.

The *pattern* is the same. Productivity leads to prosperity, which leads to a rise in individual rights. The nation then peaks in terms of personal freedom. Then, the decline begins, as democracy slowly replaces individual rights. Democracy sounds good, as it's presented as "the will of the majority." But, in fact, it's the thin end of the wedge.

Thomas Jefferson said,

*"A democracy is nothing more than mob rule, where fifty-one percent of the people may take away the rights of the other forty-nine."*

In every country, democracy appears to be benign, but it opens the door to collectivism.

But, how is this possible? Why, after over a century of the consistent and *blatant* failure of collectivist states, is it still possible for a waitress from New York City to hold up a photo of Karl Marx and get elected by a substantial margin over a liberal incumbent?

Well, the answer lies in Hobson's choice. In primitive times, a king called the shots. No choice existed. But, democracy introduced the *illusion of choice*. Since that time, it has been possible to remove more rights and to impose greater taxation than ever before *if* the population believes that their deteriorated condition is the result of personal choice.

And the greatest refinement of this process is to always proffer two (and only two) "viable" choices. All other possible choices are beyond any real consideration.

10 In his career as a power broker (referred to in polite circles as a "diplomat"), Henry Kissinger became a master at always offering two choices and two choices only.

Whether it was to either destroy the Soviet Union or face Armageddon, or invade Southeast Asia or see the end of democracy in the world, Mr. Kissinger acknowledged later in his books that Hobson's choice was one of the most formidable tools in his toolbox in succeeding in his goals.

It has often been said that "Hobson's choice is essentially no choice at all." Well, in reality that's true, but technically-speaking, Hobson's choice is always an "either/or" choice. "Take the horse in the stall next to the door or be without transportation. (Hobson never suggested a third choice, which might be to go to another stable.)

As to Mr. Ford, he essentially said, "Accept a black Model T or be without transport." (He never suggested a third choice, which might be to buy another make of car.)

And, of course, Mr. Kissinger never offered any third choice, either. He never said, "We might additionally consider true diplomacy, in which all countries have their own sovereignty and arrive at their own decisions."

And so, in the US today, as in Europe, Canada and many other countries that at one time made up the Free World, we're presented with a series of Hobson's choices. "Vote for Trump, who offers the empty promise to drain the swamp." (The implied alternative is the unchecked growth of the liberal Deep State.)

"Vote for Alexandria Ocasio-Cortez, who offers the empty promise of full collectivism." (The implied alternative is the unchecked growth of the conservative Deep State.)

And this is how an otherwise, relatively intelligent, relatively educated people come to be subjugated. It's easy to hate a king who you feel oppresses you, but most people are unable to fathom the Jesuit logic of Hobson's choice.

So, is that it? Life is doomed to end in collectivist totalitarianism? Well, no. It's just one of many phases that nations pass through.

Let's look back at Henry Ford again. During the mid-1920's, his son Edsel convinced him that Americans had tired of his practical, but grim little car. Other auto producers were offering cars with new improvements over the Ford, in addition to a variety of colours. Their market share was increasing, as they offered more *freedom of choice*.

In 1926, Henry begrudgingly acquiesced and began offering colours again. The following year, he admitted that the Model T had become outmoded through freedom of choice and the Model T's last model year was 1927.

Just as collectivism has failed wherever it's been introduced, in every one of these countries, it was (initially) welcomed with open arms by the hoi polloi, as they bought into the tempting Hobson's choice.

Predictably, collapse was inevitable, as collectivism only works for the rulers. Then the country has to begin the cycle all over again, beginning, as always, with productivity.

But the process is always the same. The *welcome of collectivism* is always the first step and the nation then progresses downhill for generations.

Historically, very few people recognize when their nation is at the turning point. Nor do they recognize the universal effectiveness of Hobson's choice. The con is that there is not a multitude of choices; there are only two and one of them is clearly unlivable. So, we're not *forcing* you to do anything in particular, we're just funneling your brain so that you fail to understand that you have choices other than the one we're leading you into.

The answer is to question everything. Envision other choices. Choose your own destiny.

In his article "Why They Raped, Pillaged, and Plundered," Tom DiLorenzo reviews the evidence of war crimes in "General William Tecumseh Sherman's famous 'march to the sea' at the end of the War to Prevent Southern Independence," observing that: "The Lincoln cult – especially its hyper-warmongering neocon branch – has been holding conferences, celebrations, and commemorations [of the march to the sea] while continuing to rewrite history to suit its statist biases." The dominant historical narratives admire Sherman's "total war" policies as a corollary of their admiration for Lincoln's war. Sherman's war crimes are well-documented, and the aim of this article is not to revisit the evidence of his war crimes but to examine some of the justifications that are often advanced to exonerate Sherman.

The fact that burning civilian towns and homes is a war crime is well understood, and should be obvious to anyone familiar with what Walter Brian Cisco calls the "code of civilized warfare." In his book, *War Crimes Against Southern Civilians*, Cisco explains:

Through the centuries, by common consent within what used to be called Christendom, there arose a code of civilized warfare. Though other issues are covered by that term, and despite lapses, it came to be understood that war would be confined to combatants... breaking the code on one side encourages violations by the other, multiplying hatred and bitterness that can only increase the likelihood and intensity of future wars.

Cisco reports that despite this "code of civilized warfare," some principles of which had been enshrined in the Lieber Code, Sherman insisted that it was necessary to treat civilians in the South as combatants. Cisco explains:

Yet warring against noncombatants came to be the stated policy and deliberate practice of the United States in its subjugation of the Confederacy. Shelling and burning of cities, systematic destruction of entire districts, mass arrests, forced expulsions, wholesale plundering of personal property, even murder all became routine... Abraham Lincoln, the commander in chief with a reputation as micromanager, well knew what was going on and approved.

By Wanjiru Njoya  
Mises.org

The Lincoln cult, far from regretting the horrors of that war, continues to view the burning of the South as worthy of celebration. The triumphalist view of Lincoln's war is reflected in an opinion piece published in the *New York Times* in 2015, which argued that Sherman's war crimes were intended "to widen the burden and pain of the war beyond just rebel soldiers to include the civilian supporters of the Confederacy, especially the common folk who filled the ranks of the rebel armies."

That is depicted as a necessary price to pay to meet Lincoln's goal of saving the Union:

"the March to the Sea reveals the moral ambiguity of war and the extent to which Americans are willing to go when our national existence is at stake." Sherman himself is exonerated: "the burning of the South Carolina capital was in reality a result of confusion, misjudgment and simple bad luck. It was, in sum, an accident of war." This moral ambiguity presumes that the morality of war varies according to which side one supports—a blatantly vacuous morality.

Some triumphalists rationalize their celebration of Sherman's crimes by arguing that war crimes are in some sense "worth it" to bring war to a swift conclusion. David Gordon traces the roots of the view that brutality helps to end war, a view held by people who believe a "humane" war would only drag on needlessly:

As I have already mentioned, the antiwar movement of that time wanted to end war, not make it more humane, and indeed Tolstoy was sometimes tempted to go further. In *War and Peace*, Prince Andrei suggests that soldiers in battle should act as ruthlessly as possible, for example killing enemy prisoners out of hand. Increasing the horror of war might make it more likely that people would end it. By no means was this view confined to fictional characters; Tolstoy himself was of this opinion, though he later withdrew it, and the great Prussian military theorist Carl von Clausewitz

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spoke in similar terms. Moyn lists a number of examples, but one should be added as well: General William Sherman, who justified his tactics of wanton destruction with this same argument.

The argument that Sherman's atrocities were necessary to end the war is also associated with the perception that if a war is just, and is fought for a "righteous cause," or what is sometimes described as "the right side of history," it follows that any atrocities committed to advance that cause are also just. Such theories appeal to those who believe the end always justifies the means. That is a convenient ruse deployed in the service of brutal regimes, but in any case, it must also be asked: what "righteous cause" was Sherman engaged in? As DiLorenzo observes, "The reason Lincoln gave for launching a military invasion of the South was to save the Union." Saving the Union cannot be a righteous cause for wars of aggression. Wars of aggression are always wrong, as a just war is one fought in defense. As for apologists who argue that Sherman should not be blamed for the devastation caused to civilians by his own troops, because he did not specifically order them to pillage, rape, and murder, that too must be rejected. If this argument were accepted, there would be little way of ever holding army officers morally responsible for the outrages committed by their men.

Another version of the "end justifies the means" argument focuses on the abolition of slavery, arguing that the end of slavery is sufficient justification for not being too concerned about the war. This argument ignores the repeated insistence of both Lincoln and Sherman that they were *not* fighting for abolition of slavery. Both men were perfectly happy for slavery to continue, and only wanted to prevent secession of the Confederate States. Sherman's views on the inferiority of black people were so well-known that no one could be under the illusion that he was fighting to promote black welfare. According to the New Georgia Encyclopedia:

During the Atlanta campaign of May-September 1864, General Sherman opposed Black enlistment with word and deed. An avowed white supremacist and a reluctant liberator at best, Sherman made no effort to conceal his contempt for African Americans or to disguise the racist dogma behind his opposition to Black soldiers. Such phrases as "niggers and vagabonds," "niggers and bought recruits," and "niggers and the refuse of the South" filled his personal letters. Anxious to employ Black workers as laborers, Sherman was determined that the forces under his command would remain exclusively white. On June 3, 1864, he issued Special Field Order No. 16 forbidding recruiting officers to enlist Black soldiers who were employed by the army in any capacity.

Some people argue that even though Sherman repeatedly defended slavery, we should treat that as irrelevant because all that matters is that slavery was, in fact, abolished. So what if Sherman was a "reluctant liberator at best"? Suffice it that liberation followed. They would argue that abolition by itself constitutes an *ex post* "righteous cause" for the war that can also be attributed to Lincoln and Sherman even though they did not endorse it—they see this as a welcome, albeit unintended, consequence of the war. This argument assumes that slavery would never have ended had the war not happened—an argument that is purely speculative, and makes no attempt to link the war causally to the ending of slavery. For example, it does not explain why other countries in the West were able to end slavery without waging deadly wars.

A final illustration of the abject moral failure of Sherman's defenders comes from those who now simply ignore the entire war, treating Sherman's crimes as inconsequential. The *New York Times* 1619 project, which aims to "reframe American history" as one shaped by slavery, pays scant attention to the reasons for the war or its conduct. Lincoln and Sherman play only a minor role as "white allies" in this version of revisionist history, which asserts that slaves emancipated themselves. Union soldiers are seen as allies of slaves, while Confederate soldiers are cast as enemies of slaves. In this cartoonish view of history, the process of reframing history "requires us to place the consequences of slavery and the contributions of black Americans at the very center of the story."

Accordingly, it is the activities of black Americans—rather than the Radical Republicans, Lincoln, or Sherman—that are presented as central to the emancipation story. The war is reframed as having been fought by hundreds of thousands of slaves freed from the rebel states by Lincoln’s Emancipation Declaration, who joined the Union army and fought to liberate their brethren still held captive. The justification given for this fictitious framing is that “by acknowledging this shameful history [of slavery], by trying hard to understand its powerful influence on the present, perhaps we can prepare ourselves for a more just future.” But no “just future” can be founded on fairy tales. A just future can only be built on the truth. As David Gordon puts it, “The 1619 Project wants to replace what actually happened with an ideological myth.”

**Note:** The views expressed on [Mises.org](https://mises.org) are not necessarily those of the Mises Institute.

## Who Will Rule? An Elected President or an Unaccountable Judiciary?

February 17, 2025

By Paul Craig Roberts

[PaulCraigRoberts.org](https://paulcraigroberts.org)

The Democrats are using the judiciary to cover up their corrupt operations and theft of taxpayers’ money.

If you will notice, the slew of judges countermanding Trump’s executive orders are themselves issuing executive orders, and they are doing so with no reference to law. Instead, they are ruling that Trump’s executive orders are harming someone, including illegal immigrant-invaders who are not US citizens. This is outrageous. Harm is a subjective standard. Moreover, the judges are overlooking the harm that their rulings do.

What can Trump do? Like Andrew Jackson, he could ignore the judges. He could order the federal marshalls, who report to the president and not to the judiciary, to cease delivering the judges’ edicts and to stop providing any service to the judges other than life protection.

The rulings by these judges are so egregious that they demonstrate both that some judges are in on the grift and the danger to Democrats from having their corruption revealed is so great that it has to be prevented by having the judiciary dictate to the executive.

We have judges blocking Trump’s order against birthright citizenship which prevents illegals from gaining US citizenship by illegally entering the US in order to give birth. Such births are known as “anchor babies” as they result in citizenship for the entire family. Hows corrupt does a judge have to be to claim that the Constitution provides nefarious ways for foreigners to acquire US citizenship?



We have judges ordering Trump to reinstate federal funding for private NGOs working to undermine foreign governments and to spread sexual perversion and anti-white woke propoganda. Judges ordering the continuation of these harmful activities are arguing that it is harmful to prevent harm. Moreover, many and probably most of these NGOs are grift money-laundering operations dumping taxpayers’ money into the hands of Democrats and their children via NGO salaries and grants. Judges are even ordering Trump to continue financing private DEI and gender operation websites.

Judges do not have executive powers. They can interpret existing law and the Constitution, but not on the basis of some subjective factor as their personal notion of harm or their determination to cover up corruption.

I predicted that Trump’s attempt to restore America would be tied down in lawsuits aided and abetted by a corrupt judiciary. Something must be done about judicial overreach or the renewal of America is a lost cause.

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## Can We Really Cut Half of the Military Budget? You Bet!

RON PAUL • FEBRUARY 17, 2025 • 500 WORDS • 4 COMMENTS Q&A

The wailing sound you heard last Thursday was the chorus of the Beltway warmongers shrieking in despair at President Trump's suggestion that there was no reason for the United States to be spending one trillion dollars on "defense."

"...[O]ne of the first meetings I want to have is with President Xi of China and President Putin of Russia, and I want to say let's cut our military budget in half. And we can do that, and I think we'll be able to do that," the President told reporters.

With this statement, President Trump blew up one of the biggest myths of our time, particularly among Republicans, that spending more on the military is essential to keeping us safe. There is a vast and well-funded network of political and industrial interests that depend on maintaining that myth, from the weapons manufacturers to the mainstream media to the think tanks and beyond. Why? Because most of what is called "defense spending" has little to do with defending this country and a lot to do with enriching the politically well-connected.

Maintaining that global military empire has bankrupted the United States while making us less safe and less free. President Trump seems to understand this. But the military-industrial complex and its cheerleaders have for decades pushed the idea that we could not survive without continuously increasing their budgets.

Thanks to the work of the "Department of Government Efficiency" we are learning that much of what has been sold as "essential spending" is nothing of the sort. Take USAID, for example. We were led to believe that this agency was feeding the poor while promoting the best kind of American values overseas. Thanks to DOGE, we learned that the money was going to absurdities like funding transgender puppet shows in Peru.

We are also learning that a great deal of USAID money was going to actually overthrow democratic governments overseas – as well as manipulate foreign media and promote censorship of "dissident" voices at home and abroad. Not only was USAID not helping countries overseas – it was actually harming them!

Just as with USAID, when we are able to see just where that one trillion military budget is going Americans are going to fully realize that they have been lied to for decades. That is why we need a full audit of the Pentagon and full transparency of the results.

We also need a change in policy. Americans are beginning to understand the economic costs of maintaining a global military empire. US taxpayers are forced to cover more than half of the entire NATO budget while European countries rattle sabers at Russia and threaten war. If Europe feels so threatened by Russia, why don't they cover the costs of their own defense? Why do poor Americans have to pay for the defense of rich Europeans? Haven't we had enough of this?

I very much hope that President Trump follows through with his plan to drastically reduce our bloated military budget. We can start by closing the hundreds of military bases overseas, bringing back our troops from foreign countries, and eliminating our massive commitments to NATO and other international organizations.

We will be richer, safer, and happier.

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# What Does National Security Have To Do With Soaring Defense Spending?

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by Casey Carlisle / February 03, 2025

Paraphrasing Thomas Jefferson, the natural progress of things is for prices to yield and for quality to gain ground. Technology is what enables this natural progress. Do televisions cost more now than they did in the early '90s? What about mobile phones? Same answer for both questions: both are better and less expensive today than they were in the early '90s, which is why one will conclude that something is awry when reading headlines like "Global Military Spending Has Almost Doubled Since the Early '90s."

Why has military spending almost doubled since the early '90s? Arguably for the same reason hospital services have: government intervention. Those who 'serve' in government endlessly tax the present because they arrogantly claim to know what the future *should* be rather than allow the future to unfold via voluntary exchange between producers and consumers. Against all reason and historical precedent, they claim that, in order to stay safe, 'defense' spending must increase. But that's like claiming that, in order for eggs to contain yolks, the cost of raising chickens must necessarily outpace the rate of inflation.

"But but but" the unthinking screech, "the world is much more dangerous today!" Perhaps, but is warfare immune from technological advance? No, as Jefferson's actual quote helps explain: "The natural progress of things is for liberty to yield and government to gain ground." The world's danger stems from governments' interventions. Wars aren't cheap; governments don't engage in them for fun. The people would rather not fight, but instead of consulting with the people, governments conscript them. Increased military spending is inversely proportional to market forces – the will of the people.

Military spending has almost doubled because the government that allegedly serves us trades our present liberty for its imagined, grotesque future. Weapons manufacturing is one of the most regulated – if not *the* most regulated – industries in the "land of the free," and that regulation paves the way for the most perverse incentive imaginable: though the maiming, killing, and destruction of "them" and their cities equates to the decimation of their economy, "our" business relies on it.

But work divided – not obliterated – is what enables the natural progress of things. And when the number and duration of wars are unknown, and when that uncertainty is combined with the fact that war – at least its initial phase – is entirely devoid of market forces, weapons manufacturers can charge whatever they like, considering the governments that purchase their products spend their citizens' money and not their own. Governments have only what they've taken from the people they claim to serve, and they spend that money in the same way they obtained it: without consent.

There's nothing natural about military spending nearly doubling; it's a choice, just like inflation. But these are not choices freely made by citizens; they're choices imposed on citizens by those who claim to serve citizens. Where citizens do have a choice, however, is whether to enlist, but increasingly more patriots have decided to abstain from military enlistment. Why, then, would military spending increase while the number of those 'serving' decreases? Because, again, military spending is not the product of billions of freely transacting individuals but of a handful who claim with a straight face that they know better than the billions engaging in voluntary exchange (the global economy).

"That's just the way things are" is what the parasites hope you'll keep chanting, but that song is better ascribed to things subjected to market forces. "This is the way things will be" is why global military spending has doubled and will continue to increase. As long as the government—not the people – decides which weapons will be purchased and which wars will be funded, the people will continue to fund the increasingly expensive suffering of others worldwide for the benefit of their governments.

*This first appeared on RealClearMarkets.*

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## MARK BARRETT

In 1928 the nation's first Catholic presidential candidate, Gov. Al Smith of New York, nicknamed "the happy warrior" for his relentless optimism, was greeted by burning crosses as his campaign train crossed America. The Ku Klux Klan organized against him, spreading a rumor that a photograph of Smith opening the Holland Tunnel in New York was a tunnel to Rome to facilitate the arrival of the pope. Another rumor claimed that all Protestant marriages would be annulled under a Smith administration. Still another claimed that Smith would open the nation's borders to hordes of Eastern and Southern European immigrants. Charles C. Marshall, an Episcopalian lawyer, asked in an open letter in *The Atlantic Monthly* whether there was an "irrepressible conflict" between Smith's Catholic faith and the U.S. Constitution. More eloquent than the burning crosses, but the basic idea is the same.

Before launching his campaign, Smith rejected the idea that he would be subject to religious prejudice. But he eventually admitted that his faith was a political problem and confronted the issue. First, he responded to Marshall's letter in the same venue, highlighting the disingenuous nature of many of the charges and patiently refuting the logic of others. Second, in a campaign speech in Oklahoma City, the heart of Klan country, he condemned as sacrilege burning the cross of Christ as a symbol of hate, and he described the attacks on his religion as pure bigotry and intolerance. In neither forum did he back away from his faith.

Smith lost, decisively. A Democrat, he lost counties that had never voted Republican before and would not again for many decades. Though many factors worked against Smith — importantly, he forcefully opposed Prohibition — the shape and scale of the defeat point to his Catholic faith as the biggest problem. The prejudice he experienced shocked and traumatized him. The campaign soured him on the American experiment, at least for a time. He grew bitter and questioned the country's commitment to its own constitutional principles. By one account, his opposition to many of the programs he had once championed as governor, when presented as national policy in the New Deal, stemmed in part from his sense that a nation so corrupted by prejudice could not be trusted with such power.

Smith loved his country, but it had scorned him, and he responded as scorned lovers often do. He had good reason to feel betrayed by America's failure to live up to its promises, but he should not have been surprised. Nor should we. The argument that Catholics do not fully belong in America, whether in its sophisticated or vulgar

form, presents itself differently now than in 1928, but it still lurks in the background of our political discussions. Recognition of this reality is no bad thing if it enhances the integrity of our witness and our moral credibility. But it is easy to lose our perspective. We may be tempted to wed our faith to political agendas that seem to offer protection and power. The media-industrial complex cultivates and profits from such temptations, trading on anger and fear. Politicians seeking to benefit from this phenomenon are legion. The battle against faith's becoming the servant of power is one that must be renewed constantly.

Yet, as Smith despaired, other Catholics, inspired by his impressive record, were addressing the needs of their communities. Though they lamented their exclusion from elite institutions, they did not see this as an impediment to promoting the well-being of their neighbors. These efforts most often began in the local community, whether in urban neighborhoods or in factories and mines through the burgeoning labor movement. Primarily focused on the material needs of individuals and families, their efforts helped to obtain jobs for the unemployed, feed widows and children, welcome and integrate immigrants into society, abolish child labor, and establish the outlines of a social-insurance system. Far from signaling a retreat from the world, this presaged the New Deal order to come, the contours of which Catholics would help to shape.

Their example should guide us today, even if the issues are different. Neoliberalism and a "throw-away culture" present a new set of problems to solve, and the commodification of everything, from human life to labor, demands a response from Catholics — a response that, if faithful, will confound both the Left and the Right. As Smith and other Catholics knew a century ago, our political choices shape the economy, which, in turn, shapes society.

When first confronted with Marshall's article, Smith is alleged to have remarked, "What the hell is an encyclical?" Whether he and our forebearers read the encyclicals or not, they applied a distinctly Catholic conception of the world to the questions of the day. They did not throw up their hands in the face of bigotry and exclusion. Nor did they retreat. Rather, they went about the hard work of figuring out how to love their neighbors and seek the common good in the realm of public law and policy. Their work testifies to their convictions. We are the inheritors of their precious legacy, if we remember it.

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