



READING PACKET FOR FEBRUARY 3, 2024 | CONTESTED ELECTIONS

CORE READING 1: Thomas Jefferson, Inaugural Address | March 4, 1801

SOURCE: <https://teachingamericanhistory.org/document/first-inaugural-address-2/>

The election of 1800 was highly contentious, pitting Democratic-Republicans supporting Thomas Jefferson against Federalists supporting the reelection of John Adams. When the electoral votes were counted, Jefferson and Aaron Burr, his presidential running mate, received the same number of votes. (When the Electoral College was created, no one had anticipated that political parties would exist to nominate candidates for both offices, so such an eventuality had not been foreseen.) Following the protocol laid out in the Constitution, the election was sent to the House of Representatives where votes were taken by state with each state getting one vote. Unfortunately for Jefferson, the Federalists still controlled the House and many initially cast their votes in favor of Burr in an attempt to deny Jefferson the presidency. In the end, however, enough Federalists supported Jefferson for him to be elected president.

Despite the contentious nature of the election, the events did not produce violence among the electorate and the election set a precedent for the peaceful transfer of power from one political party to another. Jefferson's followers also passed the Twelfth Amendment requiring separate electoral votes for president and vice president to ensure the events of 1800 would not be repeated.

—Eric C. Sands

Called upon to undertake the duties of the first executive office of our country, I avail myself of the presence of that portion of my fellow-citizens which is here assembled, to express my grateful thanks for the favor with which they have been pleased to look toward me, to declare a sincere consciousness, that the task is above my talents, and that I approach it with those anxious and awful presentiments which the greatness of the charge and the weakness of my powers so justly inspire. A rising nation, spread over a wide and fruitful land, traversing all the seas with the rich productions of their industry, engaged in commerce with nations who feel power and forget right, advancing rapidly to destinies beyond the reach of mortal eye—when I contemplate these transcendent objects, and see the honor, the happiness, and the hopes of this beloved country, committed to the issue and the auspices of this day, I shrink from the contemplation, and humble myself before the magnitude of the undertaking. Utterly, indeed, should I despair, did not the presence of many whom I here see remind me, that, in the other high authorities, provided by our Constitution I shall find resources of wisdom, of virtue, and of zeal, on which to rely under all difficulties. To you, then, gentlemen, who are charged with the sovereign functions of legislation, and to those associated with you, I look with encouragement for that guidance and support which may enable us to steer with safety the vessel in which we are all embarked amidst the conflicting elements of a troubled world.

During the contest of opinion through which we have passed the animation of discussions and of exertions has sometimes worn an aspect which might impose on strangers unused to think freely, and to write what they think; but this being now decided by the voice of the nation, announced according to the rules of the Constitution, all will, of course, arrange themselves under the will of the law, and unite in common efforts for the common good.



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All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal laws must protect, and to violate would be oppression. Let us, then, fellow-citizens, unite with one heart and one mind. Let us restore to social intercourse that harmony and affection without which liberty and even life itself are but dreary things. And let us reflect that, having banished from our land that religious intolerance, under which mankind so long bled and suffered, we have yet gained little if we countenance a political intolerance as despotic, as wicked, and capable of as bitter and bloody persecutions. During the throes and convulsions of the ancient world, during the agonizing spasms of infuriated man, seeking through blood and slaughter his long-lost liberty, it was not wonderful that the agitation of the billows should reach even this distant and peaceful shore; that this should be more felt and feared by some and less by others, and should divide opinions as to measures of safety. But every difference of opinion is not a difference of principle. We have called by different names brethren of the same principle. We are all Republicans, we are all Federalists. If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it. I know, indeed, that some honest men fear a republican government cannot be strong, that this Government is not strong enough; but would the honest patriot, in the full tide of successful experiment, abandon a government which has so far kept us free and firm on the theoretic and visionary fear that this Government, the world's best hope, may by possibility want energy to preserve itself? I trust not. I believe this, on the contrary, the strongest Government on earth. I believe it the only one where every man, at the call of the law, would fly to the standard of the law, and would meet invasions of the public order as his own personal concern. Sometimes it is said that man cannot be trusted with the government of himself. Can he, then, be trusted with the government of others? Or have we found angels in the form of kings to govern him? Let history answer this question.

Let us, then, with courage and confidence, pursue our own Federal and Republican principles, our attachment to union and representative government. Kindly separated by nature and a wide ocean from the exterminating havoc of one quarter of the globe; too high-minded to endure the degradations of the others; possessing a chosen country, with room enough for our descendants to the thousandth and thousandth generation; entertaining a due sense of our equal right to the use of our own faculties, to the acquisitions of our own industry, to honor and confidence from our fellow-citizens, resulting not from birth, but from our actions and their sense of them; enlightened by a benign religion, professed, indeed, and practiced in various forms, yet all of them inculcating honesty, truth, temperance, gratitude, and the love of man; acknowledging and adoring an overruling Providence, which by all its dispensations proves that it delights in the happiness of man here and his greater happiness hereafter—with all these blessings, what more is necessary to make us a happy and a prosperous people? Still one thing more, fellow-citizens—a wise and frugal Government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities.



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About to enter, fellow-citizens, on the exercise of duties which comprehend everything dear and valuable to you, it is proper you should understand what I deem the essential principles of our Government, and consequently those which ought to shape its Administration. I will compress them within the narrowest compass they will bear, stating the general principle, but not all its limitations. Equal and exact justice to all men, of whatever state or persuasion, religious or political; peace, commerce, and honest friendship with all nations, entangling alliances with none; the support of the State governments in all their rights, as the most competent administrations for our domestic concerns and the surest bulwarks against anti-republican tendencies; the preservation of the General Government in its whole constitutional vigor, as the sheet anchor of our peace at home, and safety abroad; a zealous care of the right of election by the people—a mild and safe corrective of abuses which are lopped by the sword of revolution where peaceable remedies are unprovided; absolute acquiescence in the decisions of the majority, the vital principle of republics, from which there is no appeal but to force, the vital principle and immediate parent of despotism; a well-disciplined militia, our best reliance in peace and for the first moments of war, till regulars may relieve them; the supremacy of the civil over the military authority; economy in the public expense, that labor may be lightly burdened; the honest payment of our debts and sacred preservation of public faith; encouragement of agriculture, and of commerce as its handmaid; the diffusion of information and arraignment of all abuses at the bar of the public reason; freedom of religion; freedom of the press, and freedom of person, under the protection of the habeas corpus, and trial by juries impartially selected. These principles form the bright constellation which has gone before us, and guided our steps through an age of revolution and reformation. The wisdom of our sages and blood of our heroes have been devoted to their attainment. They should be the creed of our political faith, the text of civic instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or of alarm, let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty, and safety.

I repair, then, fellow citizens, to the post you have assigned me. With experience enough in subordinate offices to have seen the difficulties of this the greatest of all, I have learned to expect that it will rarely fall to the lot of imperfect man to retire from this station with the reputation and the favor which bring him into it. Without pretensions to that high confidence you reposed in our first and greatest revolutionary character, whose preeminent services had entitled him to the first place in his country's love and destined for him the fairest page in the volume of faithful history, I ask so much confidence only as may give firmness and effect to the legal administration of your affairs. I shall often go wrong through defect of judgment. When right, I shall often be thought wrong by those whose positions will not command a view of the whole ground. I ask you indulgence for my own errors, which will never be intentional, and your support against the error of others, who may condemn what they would not if seen in all its parts. The approbation implied by your suffrage is a great consolation to me for the past, and my future solicitude will be to retain the good opinion of those who have bestowed it in advance, to conciliate that of others by doing them all the good in my power, and to be instrumental to the happiness and freedom of all.



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Relying, then, on the patronage of your good will, I advance with obedience to the work, ready to retire from it whenever you become sensible how much better choice it is in your power to make. And may that Infinite Power which rules the destinies of the universe lead our councils to what is best, and give them a favorable issue for your peace and prosperity.

THOMAS JEFFERSON.



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CORE READING 2: *Bush v. Gore* | December 12, 2000

SOURCE: <https://www.law.cornell.edu/supct/html/00-949.ZPC.html>

Per Curiam.

I

On December 8, 2000, the Supreme Court of Florida ordered that the Circuit Court of Leon County tabulate by hand 9,000 ballots in Miami-Dade County. It also ordered the inclusion in the certified vote totals of 215 votes identified in Palm Beach County and 168 votes identified in Miami-Dade County for Vice President Albert Gore, Jr., and Senator Joseph Lieberman, Democratic Candidates for President and Vice President. The Supreme Court noted that petitioner, Governor George W. Bush asserted that the net gain for Vice President Gore in Palm Beach County was 176 votes, and directed the Circuit Court to resolve that dispute on remand. The court further held that relief would require manual recounts in all Florida counties where so-called “undervotes” had not been subject to manual tabulation. The court ordered all manual recounts to begin at once. Governor Bush and Richard Cheney, Republican Candidates for the Presidency and Vice Presidency, filed an emergency application for a stay of this mandate. On December 9, we granted the application, treated the application as a petition for a writ of certiorari, and granted certiorari.

The proceedings leading to the present controversy are discussed in some detail in our opinion in *Bush v. Palm Beach County Canvassing Bd.* On November 8, 2000, the day following the Presidential election, the Florida Division of Elections reported that petitioner, Governor Bush, had received 2,909,135 votes, and respondent, Vice President Gore, had received 2,907,351 votes, a margin of 1,784 for Governor Bush. Because Governor Bush’s margin of victory was less than “one-half of a percent . . . of the votes cast,” an automatic machine recount was conducted under §102.141(4) of the election code, the results of which showed Governor Bush still winning the race but by a diminished margin. Vice President Gore then sought manual recounts in Volusia, Palm Beach, Broward, and Miami-Dade Counties, pursuant to Florida’s election protest provisions. A dispute arose concerning the deadline for local county canvassing boards to submit their returns to the Secretary of State (Secretary). The Secretary declined to waive the November 14 deadline imposed by statute. The Florida Supreme Court, however, set the deadline at November 26. We granted certiorari and vacated the Florida Supreme Court’s decision, finding considerable uncertainty as to the grounds on which it was based. On December 11, the Florida Supreme Court issued a decision on remand reinstating that date.

On November 26, the Florida Elections Canvassing Commission certified the results of the election and declared Governor Bush the winner of Florida’s 25 electoral votes. On November 27, Vice President Gore, pursuant to Florida’s contest provisions, filed a complaint in Leon County Circuit Court contesting the certification. He sought relief pursuant to §102.168(3)(c), which provides that “receipt of a number of illegal votes or rejection of a number of legal votes sufficient to change or place in doubt the result of the election” shall be grounds for a contest. The Circuit Court denied relief, stating that Vice President Gore failed to meet his burden



of proof. He appealed to the First District Court of Appeal, which certified the matter to the Florida Supreme Court.

Accepting jurisdiction, the Florida Supreme Court affirmed in part and reversed in part. The court held that the Circuit Court had been correct to reject Vice President Gore's challenge to the results certified in Nassau County and his challenge to the Palm Beach County Canvassing Board's determination that 3,300 ballots cast in that county were not, in the statutory phrase, "legal votes."

The Supreme Court held that Vice President Gore had satisfied his burden of proof under §102.168(3)(c) with respect to his challenge to Miami-Dade County's failure to tabulate, by manual count, 9,000 ballots on which the machines had failed to detect a vote for President ("undervotes"). Noting the closeness of the election, the Court explained that "[o]n this record, there can be no question that there are legal votes within the 9,000 uncounted votes sufficient to place the results of this election in doubt." A "legal vote," as determined by the Supreme Court, is "one in which there is a 'clear indication of the intent of the voter.'" The court therefore ordered a hand recount of the 9,000 ballots in Miami-Dade County. Observing that the contest provisions vest broad discretion in the circuit judge to "provide any relief appropriate under such circumstances," the Supreme Court further held that the Circuit Court could order "the Supervisor of Elections and the Canvassing Boards, as well as the necessary public officials, in all counties that have not conducted a manual recount or tabulation of the undervotes ... to do so forthwith, said tabulation to take place in the individual counties where the ballots are located."

The Supreme Court also determined that both Palm Beach County and Miami-Dade County, in their earlier manual recounts, had identified a net gain of 215 and 168 legal votes for Vice President Gore. Rejecting the Circuit Court's conclusion that Palm Beach County lacked the authority to include the 215 net votes submitted past the November 26 deadline, the Supreme Court explained that the deadline was not intended to exclude votes identified after that date through ongoing manual recounts. As to Miami-Dade County, the Court concluded that although the 168 votes identified were the result of a partial recount, they were "legal votes [that] could change the outcome of the election." The Supreme Court therefore directed the Circuit Court to include those totals in the certified results, subject to resolution of the actual vote total from the Miami-Dade partial recount.

The petition presents the following questions: whether the Florida Supreme Court established new standards for resolving Presidential election contests, thereby violating Art. II, §1, cl. 2, of the United States Constitution and failing to comply with [3 U.S.C. § 5](#) and whether the use of standardless manual recounts violates the Equal Protection and Due Process Clauses. With respect to the equal protection question, we find a violation of the Equal Protection Clause.

II

A

The closeness of this election, and the multitude of legal challenges which have followed in its wake, have brought into sharp focus a common, if heretofore unnoticed, phenomenon. Nationwide statistics reveal that an estimated 2% of ballots cast do not register a vote for President for whatever reason, including deliberately choosing no



candidate at all or some voter error, such as voting for two candidates or insufficiently marking a ballot. In certifying election results, the votes eligible for inclusion in the certification are the votes meeting the properly established legal requirements.

This case has shown that punch card balloting machines can produce an unfortunate number of ballots which are not punched in a clean, complete way by the voter. After the current counting, it is likely legislative bodies nationwide will examine ways to improve the mechanisms and machinery for voting.

B

The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the Electoral College. This is the source for the statement in *McPherson v. Blacker*, (1892), that the State legislature's power to select the manner for appointing electors is plenary; it may, if it so chooses, select the electors itself, which indeed was the manner used by State legislatures in several States for many years after the Framing of our Constitution. History has now favored the voter, and in each of the several States the citizens themselves vote for Presidential electors. When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter. The State, of course, after granting the franchise in the special context of Article II, can take back the power to appoint electors.

The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another. It must be remembered that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."

There is no difference between the two sides of the present controversy on these basic propositions. Respondents say that the very purpose of vindicating the right to vote justifies the recount procedures now at issue. The question before us, however, is whether the recount procedures the Florida Supreme Court has adopted are consistent with its obligation to avoid arbitrary and disparate treatment of the members of its electorate.

Much of the controversy seems to revolve around ballot cards designed to be perforated by a stylus but which, either through error or deliberate omission, have not been perforated with sufficient precision for a machine to count them. In some cases a piece of the card—a chad—is hanging, say by two corners. In other cases there is no separation at all, just an indentation.

The Florida Supreme Court has ordered that the intent of the voter be discerned from such ballots. For purposes of resolving the equal protection challenge, it is not necessary to decide whether the Florida Supreme Court had the authority under the legislative scheme for resolving election disputes to define what a legal vote is and to mandate a manual recount implementing that definition. The recount mechanisms implemented in response to the decisions of the Florida Supreme Court do not satisfy the minimum requirement for non-arbitrary



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treatment of voters necessary to secure the fundamental right. Florida's basic command for the count of legally cast votes is to consider the "intent of the voter." This is unobjectionable as an abstract proposition and a starting principle. The problem inheres in the absence of specific standards to ensure its equal application. The formulation of uniform rules to determine intent based on these recurring circumstances is practicable and, we conclude, necessary.

The law does not refrain from searching for the intent of the actor in a multitude of circumstances; and in some cases the general command to ascertain intent is not susceptible to much further refinement. In this instance, however, the question is not whether to believe a witness but how to interpret the marks or holes or scratches on an inanimate object, a piece of cardboard or paper which, it is said, might not have registered as a vote during the machine count. The factfinder confronts a thing, not a person. The search for intent can be confined by specific rules designed to ensure uniform treatment.

The want of those rules here has led to unequal evaluation of ballots in various respects. As seems to have been acknowledged at oral argument, the standards for accepting or rejecting contested ballots might vary not only from county to county but indeed within a single county from one recount team to another.

The record provides some examples. A monitor in Miami-Dade County testified at trial that he observed that three members of the county canvassing board applied different standards in defining a legal vote. And testimony at trial also revealed that at least one county changed its evaluative standards during the counting process. Palm Beach County, for example, began the process with a 1990 guideline which precluded counting completely attached chads, switched to a rule that considered a vote to be legal if any light could be seen through a chad, changed back to the 1990 rule, and then abandoned any pretense of a per se rule, only to have a court order that the county consider dimpled chads legal. This is not a process with sufficient guarantees of equal treatment.

An early case in our one person, one vote jurisprudence arose when a State accorded arbitrary and disparate treatment to voters in its different counties. The Court found a constitutional violation. We relied on these principles in the context of the Presidential selection process in *Moore v. Ogilvie*, (1969), where we invalidated a county-based procedure that diluted the influence of citizens in larger counties in the nominating process. There we observed that "[t]he idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government."

The State Supreme Court ratified this uneven treatment. It mandated that the recount totals from two counties, Miami-Dade and Palm Beach, be included in the certified total. The court also appeared to hold sub silentio that the recount totals from Broward County, which were not completed until after the original November 14 certification by the Secretary of State, were to be considered part of the new certified vote totals even though the county certification was not contested by Vice President Gore. Yet each of the counties used varying standards to determine what was a legal vote. Broward County used a more forgiving standard than Palm Beach County, and uncovered almost three times as many new votes, a result markedly disproportionate to the difference in population between the counties.



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In addition, the recounts in these three counties were not limited to so-called undervotes but extended to all of the ballots. The distinction has real consequences. A manual recount of all ballots identifies not only those ballots which show no vote but also those which contain more than one, the so-called overvotes. Neither category will be counted by the machine. This is not a trivial concern. At oral argument, respondents estimated there are as many as 110,000 overvotes statewide. As a result, the citizen whose ballot was not read by a machine because he failed to vote for a candidate in a way readable by a machine may still have his vote counted in a manual recount; on the other hand, the citizen who marks two candidates in a way discernable by the machine will not have the same opportunity to have his vote count, even if a manual examination of the ballot would reveal the requisite indicia of intent. Furthermore, the citizen who marks two candidates, only one of which is discernable by the machine, will have his vote counted even though it should have been read as an invalid ballot. The State Supreme Court's inclusion of vote counts based on these variant standards exemplifies concerns with the remedial processes that were under way.

That brings the analysis to yet a further equal protection problem. The votes certified by the court included a partial total from one county, Miami-Dade. The Florida Supreme Court's decision thus gives no assurance that the recounts included in a final certification must be complete. Indeed, it is respondent's submission that it would be consistent with the rules of the recount procedures to include whatever partial counts are done by the time of final certification, and we interpret the Florida Supreme Court's decision to permit this. This accommodation no doubt results from the truncated contest period established by the Florida Supreme Court in Bush I, at respondents' own urging. The press of time does not diminish the constitutional concern. A desire for speed is not a general excuse for ignoring equal protection guarantees.

In addition to these difficulties the actual process by which the votes were to be counted under the Florida Supreme Court's decision raises further concerns. That order did not specify who would recount the ballots. The county canvassing boards were forced to pull together ad hoc teams comprised of judges from various Circuits who had no previous training in handling and interpreting ballots. Furthermore, while others were permitted to observe, they were prohibited from objecting during the recount.

The recount process, in its features here described, is inconsistent with the minimum procedures necessary to protect the fundamental right of each voter in the special instance of a statewide recount under the authority of a single state judicial officer. Our consideration is limited to the present circumstances, for the problem of equal protection in election processes generally presents many complexities.

The question before the Court is not whether local entities, in the exercise of their expertise, may develop different systems for implementing elections. Instead, we are presented with a situation where a state court with the power to assure uniformity has ordered a statewide recount with minimal procedural safeguards. When a court orders a statewide remedy, there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied.

Given the Court's assessment that the recount process underway was probably being conducted in an unconstitutional manner, the Court stayed the order directing the recount so it could hear this case and render an



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expedited decision. The contest provision, as it was mandated by the State Supreme Court, is not well calculated to sustain the confidence that all citizens must have in the outcome of elections. The State has not shown that its procedures include the necessary safeguards. The problem, for instance, of the estimated 110,000 overvotes has not been addressed, although Chief Justice Wells called attention to the concern in his dissenting opinion.

Upon due consideration of the difficulties identified to this point, it is obvious that the recount cannot be conducted in compliance with the requirements of equal protection and due process without substantial additional work. It would require not only the adoption (after opportunity for argument) of adequate statewide standards for determining what is a legal vote, and practicable procedures to implement them, but also orderly judicial review of any disputed matters that might arise. In addition, the Secretary of State has advised that the recount of only a portion of the ballots requires that the vote tabulation equipment be used to screen out undervotes, a function for which the machines were not designed. If a recount of overvotes were also required, perhaps even a second screening would be necessary. Use of the equipment for this purpose, and any new software developed for it, would have to be evaluated for accuracy by the Secretary of State, as required by Fla. Stat. §101.015 (2000).

The Supreme Court of Florida has said that the legislature intended the State's electors to "participate fully in the federal electoral process," as provided in [3 U.S.C. § 5](#). That statute, in turn, requires that any controversy or contest that is designed to lead to a conclusive selection of electors be completed by December 12. That date is upon us, and there is no recount procedure in place under the State Supreme Court's order that comports with minimal constitutional standards. Because it is evident that any recount seeking to meet the December 12 date will be unconstitutional for the reasons we have discussed, we reverse the judgment of the Supreme Court of Florida ordering a recount to proceed.

Seven Justices of the Court agree that there are constitutional problems with the recount ordered by the Florida Supreme Court that demand a remedy. The only disagreement is as to the remedy. Because the Florida Supreme Court has said that the Florida Legislature intended to obtain the safe-harbor benefits of [3 U.S.C. § 5](#). Justice Breyer's proposed remedy—remanding to the Florida Supreme Court for its ordering of a constitutionally proper contest until December 18—contemplates action in violation of the Florida election code, and hence could not be part of an "appropriate" order authorized by Fla. Stat. §102.168(8) (2000).

None are more conscious of the vital limits on judicial authority than are the members of this Court, and none stand more in admiration of the Constitution's design to leave the selection of the President to the people, through their legislatures, and to the political sphere. When contending parties invoke the process of the courts, however, it becomes our unsought responsibility to resolve the federal and constitutional issues the judicial system has been forced to confront.

The judgment of the Supreme Court of Florida is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

Pursuant to this Court's Rule 45.2, the Clerk is directed to issue the mandate in this case forthwith.

It is so ordered.



**SUPPLEMENTARY READING 1: Letter from Alexander Hamilton to James A. Bayard | January 16,
1801**

SOURCE: <https://founders.archives.gov/documents/Hamilton/01-25-02-0169>

To James A. Bayard
New-York Jany. 16th. 1801.

I was glad to find my dear sir, by your letter, that you had not yet determined to go with the current of the Fœderal Party in the support of Mr Burr & that you were resolved to hold yourself disengaged till the moment of final decision. Your resolution to separate yourself, in this instance, from the Fœderal Party if your conviction shall be strong of the unfitness of Mr Burr, is certainly laudable. So much does it coincide with my ideas, that if the Party Shall by supporting Mr Burr as President adopt him for their official Chief—I shall be obliged to consider myself as an isolated man. It will be impossible for me to reconcile with my notions of honor or policy, the continuing to be of a Party which according to my apprehension will have degraded itself & the country. I am sure nevertheless that the motives of many will be good, and I shall never cease to esteem the individuals, tho' I shall deplore a step which I fear experience will show to be a very fatal one. Among the letters which I receive assigning the reasons pro & con for preferring Burr to J. I observe no small exaggeration to the prejudice of the latter & some things taken for granted as to the former which are at least questionable. Perhaps myself the first, at some expence of popularity, to unfold the true character of Jefferson, it is too late for me to become his apologist. Nor can I have any disposition to do it. I admit that his politics are tinctured with fanaticism, that he is too much in earnest in his democracy, that he has been a mischevous enemy to the principle measures of our past administration, that he is crafty & persevering in his objects, that he is not scrupulous about the means of success, nor very mindful of truth, and that he is a contemptible hypocrite. But it is not true as is alleged that he is an enemy to the power of the Executive, or that he is for confounding all the powers in the House of Rs. It is a fact which I have frequently mentioned that while we were in the administration together he was generally for a large construction of the Executive authority, & not backward to act upon it in cases which coincided with his views. Let it be added, that in his theoretic Ideas he has considered as improper the participations of the Senate in the Executive Authority. I have more than once made the reflection that viewing himself as the reversioner, he was solicitous to come into possession of a Good Estate. Nor is it true that Jefferson is zealot enough to do anything in pursuance of his principles which will contravene his popularity, or his interest. He is as likely as any man I know to temporize—to calculate what will be likely to promote his own reputation and advantage; and the probable result of such a temper is the preservation of systems, though originally opposed, which being once established, could not be overturned without danger to the person who did it. To my mind a true estimate of Mr J.'s character warrants the expectation of a temporizing rather than a violent system. That Jefferson has manifested a culpable predilection for France is certainly true; but I think it a question whether it did not proceed quite as much from her popularity among us, as from sentiment, and in proportion as that popularity is diminished his zeal will cool. Add to this that there is no



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fair reason to suppose him capable of being corrupted, which is a security that he will not go beyond certain limits. It is not at all improbable that under the change of circumstances Jefferson's Gallicism has considerably abated.

As to Burr these things are admitted and indeed cannot be denied, that he is a man of extreme & irregular ambition—that he is selfish to a degree which excludes all social affections & that he is decidedly profligate. But it is said, 1st. that he is artful & dexterous to accomplish his ends—2nd. that he holds no pernicious theories, but is a mere matter of fact man—3rd. that his very selfishness is a guard against mischievous foreign predilections. 4th That his local situation has enabled him to appreciate the utility of our Commercial & fiscal systems, and the same quality of selfishness will lead him to support & invigorate them. 5th. that he is now disliked by the Jacobins, that his elevation will be a mortal stab to them, breed an invincible hatred to him, & compel him to lean on the Federalists. 6th. That Burr's ambition will be checked by his good sense, by the manifest impossibility of succeeding in any scheme of usurpation, & that if attempted, there is nothing to fear from the attempt. These topics are in my judgment more plausible than solid. As to the 1st point the fact must be admitted, but those qualities are objections rather than recommendations when they are under the direction of bad principles. As to the 2nd point too much is taken for granted. If Burr's conversation is to be credited he is not very far from being a visionary. It is ascertained in some instances that he has talked perfect Godwinism. I have myself heard him speak with applause of the French system as unshackling the mind & leaving it to its natural energies, and I have been present when he has contended against Banking Systems with earnestness & with the same arguments that Jefferson would use. The truth is that Burr is a man of a very subtle imagination, and a mind of this make is rarely free from ingenious whimsies. Yet I admit that he has no fixed theory & that his peculiar notions will easily give way to his interest. But is it a recommendation to have no theory? Can that man be a systematic or able statesman who has none? I believe not. No general principles will hardly work much better than erroneous ones. As to the 3rd. point—it is certain that Burr generally speaking has been as warm a partisan of France as Jefferson—that he has in some instances shewn himself to be so with passion. But if it was from calculation who will say that his calculations will not continue him so? His selfishness* so far from being an obstacle may be a prompter. If corrupt as well as selfish he may be a partisan for gain—if ambitious as well as selfish, he may be a partisan for the sake of aid to his views. No man has trafficked more than he in the floating passions of the multitude. Hatred to G. Britain & attachment to France in the public mind will naturally lead a man of his selfishness, attached to place and power, to favour France & oppose G. Britain. The Gallicism of many of our patriots is to be thus resolved, & in my opinion it is morally certain that Burr will continue to be influenced by this calculation. As to the 4th point the instance I have cited with respect to Banks proves that the argument is not to be relied on. If there was much in it, why does Chancellor Livingston maintain that we ought not to cultivate navigation but ought to let foreigners be our Carriers? France is of this opinion too & Burr for some reason or other, will be very apt to be of the opinion of France. As to the 5th point—nothing can be more fallacious. It is demonstrated by recent facts that Burr is solicitous to keep upon Antifederal ground, to avoid compromising himself by any engagements with the Fœderalists. With or without such engagements he will easily persuade his former friends that he does stand on that ground, & after their first resentment they will be glad to rally under him.



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In the mean time he will take care not to disoblige them & he will always court those among them who are best fitted for tools. He will never choose to lean on good men because he knows that they will never support his bad projects: but instead of this he will endeavour to disorganize both parties & to form out of them a third composed of men fitted by their characters to be conspirators, & instruments of such projects. That this will be his future conduct may be inferred from his past plan, & from the admitted quality of irregular ambition. Let it be remembered that Mr Burr has never appeared solicitous for fame, & that great Ambition unchecked by principle, or the love of Glory, is an unruly Tyrant which never can keep long in a course which good men will approve. As to the last point—The proposition is against the experience of all times. Ambition without principle never was long under the guidance of good sense. Besides that, really the force of Mr Burrs understanding is much overrated. He is far more cunning than wise, far more dexterous than able. In my opinion he is inferior in real ability to Jefferson. There are also facts against the supposition. It is past all doubt that he has blamed me for not having improved the situation I once was in to change the Government. That when answered that this could not have been done without guilt—he replied—“Les grands ames se soucient peu des petits morceaux”—that when told the thing was never practicable from the genius and situation of the country, he answered, “that depends on the estimate we form of the human passions and of the means of influencing them.” Does this prove that Mr Burr would consider a scheme of usurpation as visionary. The truth is with great apparent coldness he is the most sanguine man in the world. He thinks every thing possible to adventure and perseverance. And tho’ I believe he will fail, I think it almost certain he will attempt usurpation. An[d] the attempt will involve great mischief.

But there is one point of view which seems to me decisive. If the Antifœderalists who prevailed in the election are left to take their own man, they remain responsible, and the Fœderalists remain free united and without stain, in a situation to resist with effect pernicious measures. If the Fœderalists substitute Burr, they adopt him and become answerable for him. Whatever may be the theory of the case, abroad and at home (for so from the beginning will be taught) Mr Burr will become in fact the man of our party. And if he acts ill, we must share in the blame and disgrace. By adopting him we do all we can to reconcile the minds of the Fœderalists to him, and prepare them for the effectual operation of his arts. He will doubtless gain many of them, & the Fœderalists will become a disorganized and contemptible party. Can there be any serious question between the policy of leaving the Antifœderalists to be answerable for the elevation of an exceptionable man, & that of adopting ourselves & becoming answerable for a man who on all hands is acknowledged to be a complete Cataline in his practice & principles? ’Tis enough to state the question to indicate the answer, if reason not passion presides in the decision. You may communicate this & my former letter to discreet & confidential friends.

Your’s very truly,
A H



SUPPLEMENTARY READING 2: Samuel Tilden, speech to the Manhattan Club | June 13, 1877

SOURCE: <https://www.rbhayes.org/hayes/1876-presidential-concession-speech>

Mr. President and Gentlemen of the Manhattan Club:-I accepted your invitation under the idea that this was to be a merely social meeting, the special occasion of which was the presence in this city of Mr. Hendricks and of Governor Robinson and Lieutenant Governor Dorsheimer. One of your guests, Mr. Hendricks, embarks tomorrow on a foreign excursion for rest and recreation. He will carry with him our best wishes for a prosperous voyage, pleasant visit and a safe return, and for the health and happiness of himself and family.

I have been availing myself, for similiar purposes, of a brief interval, and find myself now, with some reluctance, drawn away from those private pursuits. But the occasion and the apparent general expectation seem to require that I should say a word in respect to public affairs, and especially that I should allude to the transaction which, in my judgment, is the most portentous in our political history.

Everybody knows that, after the recent election, the men who were elected by the people President and Vice President of the United States were "counted out," and men who were not elected were "counted in" and seated.

NO PERSONAL WRONG.

I disclaim any thought of the personal wrong involved in this transaction. Not by any act or word of mine shall that be dwarfed or degraded into a personal grievance, which is, in truth, the greatest wrong that has stained our national annals. To every man of the four and a quarter millions who were defrauded of the fruits of their elective franchise it is as great a wrong as it is to me. And no less to every man of the minority will the ultimate consequences extend. Evils in government grow by success and by impunity. They do not arrest their own progress. They can never be limited except by external forces.

MUST NOT BE CONDONED.

If the men in possession of the government can, in one instance, maintain themselves in power against an adverse decision at the elections, such an example will be imitated. Temptation exists always. Devices to give the color of law, and false pretences on which to found fraudulent decisions, will not be wanting. The wrong will grow into a practice, if condoned-if once condoned.

In the world's history changes in the succession of governments have usually been the result of fraud or force. It has been our faith and our pride that we had established a mode of peaceful change to be worked out by the agency of the ballot box. The question now is whether our elective system, in its substance as well as its form, is to be maintained.

THE QUESTION OF QUESTIONS.

This is the question of questions. Until it is finally settled there can be no politics founded on interior questions of administrative policy. It involves the fundamental right of the people. It involves the elective principle. It involves the whole system of popular government. The people must signally condemn the great wrong which has been done to them. They must strip the example of everything that can attract imitators. They must refuse a prosperous



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immunity to crime. This is not all. The people will not be able to trust the authors or beneficiaries of the wrong to devise remedies. But when those who condemn the wrong shall have the power they must devise the measure which shall render a repetition of the wrong forever impossible.

BE OF GOOD CHEER.

If my voice could reach throughout our country and be heard in its remotest hamlet I would say. "Be of good cheer. The Republic will live. The institutions of our fathers are not to expire in shame. The sovereignty of the people shall be rescued from this peril and be re-established."

THE TWEED RING.

Successful wrong never appears so triumphant as on the very eve of its fall. Seven years ago a corrupt dynasty culminated in its power over the million of people who live in the city of New York. It has conquered or bribed, or flattered and won almost everybody into acquiescence. It appeared to be invincible. A year or two later its members were in the penitentiaries or in exile. History abounds in similar examples. We must believe in the right and in the future. A great and noble nation will not sever its political from its moral life. (Applause.)



SUPPLEMENTARY READING 3: Richard Nixon, Remarks Conceding the Presidential Election in Los Angeles, California | November 6, 1960

SOURCE: <https://www.presidency.ucsb.edu/documents/remarks-conceding-the-presidential-election-los-angeles-california>

Vice President Nixon: Thank you! Thank you very much!

Audience: We want Nixon! NOW!

Vice President Nixon: Thank you! Thank you very much! Well, you know, I thought that we...I thought...I was going to say that I thought that we had the last rally of the campaign, but here we go again. [cheers and applause]

As all of you in this room know, and as all of you millions who are listening on television and radio realize, it is normally the custom for a candidate for the presidency or for any other office, not to appear until after the decision is definitely known, and all the votes are counted beyond doubt. However, I have been keeping some pretty late hours recently and, as some of you have, I know who have met me at the airports as I've come in with Pat on occasion. I know too that many who are listening in the Eastern part of the United States will find that it is now about 3:15 in the morning. And, before the evening was over I did want to have the opportunity to speak to those in this room who have been with us during the day, and also to those who are listening on television, to say these things:

First, to express to all of you who have done so much in this campaign, our appreciation. Words are really inadequate at times like this. We can only try to let you feel what we have in our hearts.

And I can say...[cheers and applause]...I can say that we never had a more...couldn't have had a more wonderful group of people in all of the fifty states than have been in our campaign. [applause].

And then too...and then too...I...[cheers and applause]. The other thing that I wish to do is this. I am sure that many are listening here who are supporting Mr. Senator Kennedy. I know that he too is probably listening to this program. [laughing and booing]

And...please...

And as I look at the board here, while there are still some results still to come in, if the present trend continues, Mr. Kennedy, Senator Kennedy will be the next President of the United States.

Audience: [booing] No! No! We want Nixon! We want Nixon! We want Nixon!

Vice President Nixon: Thank you very much. And I want to say that one of the...I want to say that one of the great features of America is that we have political contests. That they are very hard fought, as this one was hard fought, and once the decision is made we unite behind the man who is elected.

I want all of you to know...[applause and shouts]...I want Sen. Kennedy to know and I want all of you to know that certainly if this trend does continue, and he does become our next president, he will have my wholehearted support and yours as well."



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Audience: No!

Vice President Nixon: And my friends...my friends, with that I want to say, again, my deep thanks to all of you who are here; to those who have listened on television and radio. And again, my congratulations to Sen. Kennedy for his fine race in this campaign, and to all of you...

Audience: NO! NO!

Vice President Nixon: I am sure his supporters are just as enthusiastic as you are for me, and I thank you for that. *[cheers and applause]* And, while because of interruptions, which I understand, I have not perhaps been able to make this as coherent a statement as I might have wanted to, I do want to say that having been to all of the 50 states of this nation since the nominating convention in Chicago, having seen the American people, seen them by the hundreds of thousands and perhaps the millions, in the towns and cities of America, that I have great faith about the future of this country. I have great faith that our people, Republicans, Democrats alike, will unite behind our next President in seeing that America...

Audience: We want Nixon! We want Nixon! We want Nixon!

Vice President Nixon: ...that they will unite behind our next president in seeing that America does meet the challenge which destiny has placed upon us. And that challenge is to give the leadership to the whole world which will produce a world in which all men can have what we have in the United States: freedom, independence, the right to live in peace with our neighbors.

And so with that...so with that let me say again my thanks to you, having had only two hours sleep last night and two hours sleep the night before, I'm now going to bed and I hope you do too!

Nixon's "official" concession came in a telegram sent at 9:47 a.m. Los Angeles time on November 9, a few minutes after Kennedy had cinched election by winning Minnesota's 11 electoral votes.

The telegram read: "I want to repeat through this wire congratulations and best wishes I extended to you on television Tuesday night. I know you will have the united support of all Americans as you lead the nation in the cause of peace and freedom in the next four years."