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Discourse on the Limits of Civil Authority Deduced from Their Source

Surely few nations have been in such fortunate circumstances for creating constitutions with all possible human perfection as are the American nations, which a half century ago became independent of European powers: The enlightenment generally disseminated by the freedom of the press established in England, France, Spain, Portugal, and Naples; the spirit of liberty, rapidly diffused to all points of the globe; the enthusiasm with which liberal ideas and the rights of peoples, which have gone on to be the subject of a general discussion, have been proclaimed, maintained, and elevated to the highest state; the conviction, produced by the disasters of the most recent revolutions, that one cannot successfully implement certain theories, which, even though they present a store of speculative truths, cannot be realized in practice; and, finally, being entirely free of the obstacles naturally put in the way of any reform by a despotic government consolidated through hundreds of years on stale preconceived notions such as hereditary nobility, feudal domain, sovereignty of kings derived directly from God, and others of the same sort, which practically convinced peoples of the absurd and monstrous doctrine of natural inequality among the children of Adam and which have not permitted a total reform in the states of Europe through the slow but always progressive steps enlightenment has made in them. This lack of obstacles, we repeat, and this abundance of resources that at present make up the political situation of the American peoples, provide sufficient grounds for expecting, from the congresses established on their vast surface, constitutions much more perfect than those created in Europe.

In effect, the outcome has been completely what was to be expected. The Constitution of the United States of North America not only has

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been highly praised by the most celebrated writers of Europe, but has also created glory and prosperity, in a firm and stable way, in the freest people of the world, even putting that country almost at the level of England in its navy, and of France in its arts and manufacturing. It has done this in the short space of a half century, when those other nations have not been able to get to their current level of prosperity except after hundreds of years and terrible political oscillations and fluctuations. We, then, desirous that our country take advantage of the happy opportunity that has come within its reach to constitute itself with peace and tranquility, have proposed, and have already begun to carry out, placing before our fellow citizens the constitutions of the most notable peoples. At the end of all of them, in a separate discourse, we make the observations and reflections that seem most suitable to us. But before our proposal takes effect with respect to the Anglo-American and French constitutions that we have just published, it has seemed worthwhile to us to determine the general limits within which the authority of any government must be contained, without subjecting ourselves blindly to the doctrines of the European writers on public law, and keeping in mind only the goal of social institutions and the nature of the contract that unites peoples with governments.

Whatever might be the origin of societies, it is completely certain that these could not be established for any purpose other than fostering the happiness of the individuals who make them up, securing their persons, their interests, and their civil liberty, insofar as limiting these is not necessary to uphold the interests of the community. From this luminous principle are deduced all the consequences that constitute the science of government, and we will proceed to set them out. It follows, in the first place, that the authority of societies is not absolutely limitless as Rousseau believed, for such authority, wherever it might reside, is necessarily and essentially tyrannical. For what does it mean and what do we understand by unlimited authority, if not the power to do whatever one might wish? And cannot he who believes he has it, by virtue of this power, commit the greatest crimes, depriving an innocent person of life, divesting the legitimate owner of his property, and trampling on all the safeguards of liberty with no other motive than his whim? No, these are not the simple fears of an overexcited imagination. They are outcomes confirmed by experience, for, as the famous Constant observes, the horrifying crimes committed in the French Revolution against indi-

vidual liberty and the rights of the citizen stemmed in great part from the vogue of this doctrine, which not only is not liberal, but rather is the fundamental principle of despotism. This principle does not consist, as many have convinced themselves, in the abuse the monarch makes of the authority entrusted to him or that he has usurped. In that case, it would be supremely easy to cure nations of their political ills by exiling the monarchs forever, and the popular government would always be justified in such a case. But reason and experience agree in disproving such an unfounded theory, showing us despotic peoples like those of France in its revolution and liberal monarchs like those of England and Spain. Despotism, then, is nothing more than the absolute and unlimited use of power, without subjection to any rule, no matter whose hands might be driving this formidable mass that makes all its weight felt on the individuals of the state. It follows that we can call despotic a measure that has been decreed only to satisfy the will of the one who commands. But if all government, considered in the scope of the three powers, must exercise its functions within prescribed limits, determining those limits with the greatest precision and exactitude is an absolute necessity to avoid the unfortunate consequences produced by the erroneous ideas of many writers regarding the rights of the people over the government and of the government over the people. Let us return, then, to the original source of societies. Let us examine the principles of the social contract with attentive impartiality and detailed reflective meditation, and with that effort alone we will discover the solution to this problem.

Men, in addition to the divine order to multiply, have in their nature strong drives for propagating their species and such inbred self-love that these do not disappear even in the least of their actions. Men do not enjoy except when their appetites and needs are satisfied; nor do they become sad and anguished except when they lack something that is necessary, or they believe is necessary, to satisfy their needs and to rest in that tranquility and repose that constitutes human happiness.

One of human nature's strongest inclinations is the one individuals have to preserve themselves in the state of natural liberty bestowed on them by the creator of all things and, thus, to obtain the enjoyments analogous to their natural inclinations; but in the few steps they made on this painful, difficult, and risky path, they became convinced that the happiness of each of them was not the act of a single man, but rather the result of common efforts. Surrounded everywhere by enemies, at-

tacked by hunger and reptiles, pursued by ferocious beasts, and feeling the weakness of their strengths, they agreed to give each other aid under certain covenants or conditions. Here are both the first social contract in the world and the sovereignty of the people, which, in each one of the contracting parties, is nothing but the right one has over oneself to provide for one's happiness in accordance with the rules prescribed by sound reason and, in the association, the aggregate of individual rights organized to the same end. These agreements made, what came about was what should have been feared—that many of those who entered into the agreements received, with the help of the rest, the desired benefit, but, when it came to fulfilling the terms of the contract, they refused, either denying the agreement or resisting its taking effect or interpreting it in their own favor despite the protests of the others. In light of these drawbacks, the men, united as described, determined to clarify the established pacts by common agreement, making use of categorical and decisive phrases, and here is the origin of the laws. But despite the clarity of these laws, the insistence on exempting oneself from them, sustained by the spirit of caviling, rendered them empty and ineffectual, those who acknowledged their existence claiming that some individual cases were not comprehended by those laws, cases believed useful to some and prejudicial to others, so it was necessary to create a neutral power invested by the common authority to resolve definitively disagreements that arose, and this is the origin of the judicial power. Finally, men refused to carry out the intent of the laws and the declarations of the judges, and it was necessary for everyone to combine their physical forces to compel each one to fulfill the obligations entered into through the original pact, and what resulted was what we call the executive power. By this, we do not claim that those distinct powers were divided from the outset, conferring them on distinct persons or bodies, for it is clear that this was the work of time and reflective meditation. But we certainly want it to be understood that these powers, distinct in reality, and for that very reason separable, were acknowledged from the time societies were founded, although they were vested in a single person or body. For this very reason, the doctrine that informs this division is not a pure theory totally unrealizable in practice, as a writer of our day claims. But let us continue reflecting on this society that moves toward its perfection. When members of the society created these powers, it

was necessary that they entrust the exercise of the functions typical of these powers to some individuals of the association who would dedicate themselves exclusively to their fulfillment. For this it was necessary to assist them with everything that their personal work was supposed to produce, and here is the origin of the posts of judges and executors of the laws. As for the legislators, who were themselves members of the association, they exercised the legislative power for themselves so long as society consisted of a small number of individuals; but the number of individuals later grew to such a degree that the personal attendance of all and each one of them at the national assembly was not possible, and he who could not [attend] entrusted his vote to someone who was ready to assist. But as these difficulties constantly increased, many began to entrust their votes to a small number of individuals, and sometimes to only one, so that, reflectively and maturely considering the interests of each, they might prescribe those measures that would be most advantageous to the maintenance of all, and this is the origin of national representation and legislative congresses. But it happened that, in exercising legislative functions, those empowered by the people did not express the will of their constituents but rather their individual wish or opinion, seeking to limit the natural liberty of the citizens more than was necessary to sustain the union. Then the individuals of the society declared that the representatives had violated the boundaries of the authority that had been entrusted to them, and the individuals of society wrote down in a solemn and positive way, in laws put before the entire public, the imprescriptible rights of man and citizen, working out the three acknowledged powers that seemed most useful for the preservation of the *liberty*, *property*, *security*, and *equality* of citizens, and here is the origin of these codes and collections of fundamental laws known by the name of constitutions.

By what has been expressed here so far, one sees clearly the origin, development, and present state of human institutions, the goal men have proposed in establishing them, and the primary reason for all their transactions, that is to say, the preservation of their rights to the extent that allows for the preservation of society. From this follows a general consequence, and it is that all authority, of whatever kind it may be, has limits to the exercise of its functions, within which it must be contained, and it is not lawful for either the people or their representatives to trample on

the rights of individuals on the pretext of preserving society, given that men, in instituting society, had no other intent nor proposed any other goal than the preservation of their *liberty, security, equality, and property*, and not to relinquish those rights to a moral body that might fully and legally exercise the most despotic tyranny over those from whom it had received this immense and formidable power.