

## ECLECTIC EDUCATION SERIES

# Andrews Manual of the Constitution

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MANUAL  
OF THE  
CONSTITUTION  
OF THE  
UNITED STATES,

DESIGNED FOR THE INSTRUCTION OF AMERICAN YOUTH IN THE DUTIES,  
OBLIGATIONS, AND RIGHTS OF CITIZENSHIP.

BY

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TO THE  
TRUSTEES OF MARIETTA COLLEGE,  
WITH WHOM,  
FOR MORE THAN A THIRD OF A CENTURY,  
THE AUTHOR  
HAS BEEN MOST PLEASANTLY ASSOCIATED,  
THIS VOLUME  
IS GRATEFULLY INSCRIBED.



## PREFACE.

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THIS work has grown out of the necessities and experience of the class-room. For the proper instruction of the student in the important subject of civil government, a clear exposition of the great principles of the Constitution is needed, with a summary of the legislative provisions in which they have been embodied. When the author took charge of this department of study, he found himself embarrassed in both these respects, and especially the latter. Questions were continually suggesting themselves, to which answers could be obtained only after laborious research.

Urged on by a deep interest in the subject, and availing himself of the unusual facilities for the prosecution of studies of this character furnished by the library of the College, the author entered upon a somewhat extended investigation of our governmental history. The materials thus accumulated, and accumulating, having for some years furnished the basis for instruction by lectures, have now been condensed into this form, and are given to the public in the hope that other instructors may be in some measure relieved

from the excessive labor which similar personal examination would involve.

While the primary object was to provide a suitable text-book, a conviction that a knowledge of our government can not be too widely diffused, and that large numbers would welcome a good work on this subject, has led to the attempt to make the volume a manual adapted for consultation and reference by the citizens at large. With this end in view, the author has sought to embody in the work that kind—and so far as space would allow, that amount—of information on the various topics which an intelligent citizen would desire to possess.

As the value of a work of this kind depends in large measure upon its accuracy, it is proper to say that in nearly every instance the statements touching the legislation or other action of the government have been taken from official publications.

MARIETTA COLLEGE,  
*January, 1874.*

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# CIVIL GOVERNMENT.

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## CHAPTER I.

CIVIL GOVERNMENT--ITS OBJECT, ORIGIN, AND NATURE—DIFFERENT FORMS OF GOVERNMENT—PECULIARITY OF THAT OF THE UNITED STATES—NOT A CONSOLIDATED REPUBLIC, NOR A LEAGUE OF STATES.

A knowledge of the nature and operation of the government under which we live is necessary for the successful prosecution of the business of life, and to secure the happiness of ourselves and of those dependent upon us. We can thus adapt ourselves to the circumstances in which we are placed, and avoid those perplexities and difficulties in which one ignorant of the laws and institutions of his country is liable to be involved. The fact that a man is subject to a government is a sufficient reason for studying its character and workings, although he may have no participation in its management.

In a republican government the importance of such knowledge is still greater, because the citizen not only is amenable to the laws, but also has a voice in electing those who make and execute them. He who lives under a despotism should acquaint himself with its character and workings for his own protection; a citizen of a republic should do the same, because he is to some extent responsible for the government.

Until within the last few years, Americans have been lamentably ignorant of their national government, both

as to its history and its operation. The war of the Rebellion, which could hardly have occurred had the whole people understood the true relation of the States to the national government, has had the effect to direct attention to governmental questions. There is probably a stronger desire for such knowledge now than at any previous time, and a corresponding demand for the introduction of such studies into all our schools of higher grade.

Two circumstances facilitate the acquisition of a competent knowledge of our government. First, our national existence extends over a comparatively brief period. About a hundred years only have passed since we became an independent people, while most of the civilized nations of the world have had a long and checkered history. Second, our Constitution is a written instrument, framed with the utmost care, and adopted by the people after the most careful deliberation. No other nation has a constitution that can compare with it, either in its comprehensiveness and completeness of subject, or in the precision of its language.

The object of civil government can not be better expressed than in the words of our Constitution. It is to "establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty." These were the express ends to secure which the people of the United States ordained and established our national Constitution. These are the ends which all governments, of whatever form, are under obligation to seek. Civil governments are not established for the good of the rulers, but for the good of the people. They are not for the good of one or a few, at the expense of the others, but for the good of all.

The general good could not be secured without government. Civil government is thus a necessity. Without it, justice could not be established, or domestic tran-

quillity insured, or the common defense provided for, or the general welfare promoted, or the blessings of liberty secured. Law is the guardian of liberty. Without law there would be no liberty, but in its stead anarchy. One object of civil government is to protect us in our rights. It does this by restraining those who would interfere with these rights. Civil government is thus rendered necessary by the disposition of some to do wrong to others, and it can not be dispensed with so long as this disposition to interfere with the rights of others continues.

But government is not merely repressive. Its necessity is not wholly owing to the fact that there are wicked men in every community. Law and government are essential for the good as well as for the bad. The "general welfare" is to be promoted, as well as the individual to be protected in his rights. There are many things to be done for the advancement of a nation, which could not be done without that combination and coöperation which are found only in governments. Science and art are to be fostered, education is to be encouraged, civilization to be advanced. Government has thus more to do than to restrain violence, to redress wrongs, and to punish the transgressor. There is government in heaven as well as on earth.

It is sometimes said, that government is a necessary evil; and that that government is best which governs least. The tendency of such language is to excite distrust and aversion, whereas governments should be respected, obeyed, and loved. A government founded in justice and administered with wisdom is always a good. Were government a necessary evil, it would be impossible to account for the existence and strength of patriotism. The love of country, which is stronger than the love of kindred, or any other of the natural affections, is itself a proof that by nature we regard government as a good and not as an evil. There may be abuses, but men look forward to the time when

these will be remedied, and the affairs of the country administered with wisdom and justice. That is not the best government which governs least, though, other things being equal, that may be the best which makes the least show of governing. A wise ruler, whether in the family or the state, will never give needless prominence to the fact that he is a ruler, while an unwise ruler is disposed to make a display of his authority. In a good government, if the law is broken punishment must follow; but the better the government, the less will be the tendency to break the law, and therefore the less the necessity of inflicting punishment. In a well-regulated school or family we see no manifestation of government, and apparently no government is needed; but this apparent absence of government is itself a proof of the excellent manner in which the government is administered.

Society is the natural state of man. His whole constitution shows that the intention of his Maker was that he should live in society and under government. History testifies that such has been the case from the beginning. In every age and in every part of the earth, men have lived together in families, tribes, nations. They have been under some authority. Civil society is thus a universal fact. It is not the result of any agreement among men, but is the natural working out of the human constitution. We are born into the nation as into the family. We do not make society, we find it already existing. We are to obey the laws of the land because they are the laws, just as the child is to obey the law of the family. In neither case is any consent asked.

When a "social compact" is spoken of in connection with civil government, it is meant that there are reciprocal duties resting upon the governed and upon those who govern. Whoever enters upon any public office, by the act of doing so agrees to perform faithfully

its duties. And whoever becomes a citizen of any nation, by becoming so makes an implied agreement that he will be a good citizen. In this sense there may be said to be, in an existing government, a compact between the governed and those who govern, and a compact between each citizen and all the others.

But it is not correct to say that civil society derives its authority through any such compact, for then the power possessed by society would be limited to that received from the individual men composing the society. But the powers of government include those which never belonged to the individual man, and therefore could never have been conferred by him upon society. Indeed, if there ever was a state of nature, as some have supposed, prior to the existence of civil society, when men lived without government, all possessing equal rights, there could manifestly have been no right to govern, since no one could have had authority over another who was his equal. Men can not give what they do not possess, and society could never obtain its right to govern from the individual citizens, since they never had such a right.

Suppose, however, that this idea of a state of nature antecedent to civil society were fact and not fiction, and that men lived without government, all possessing equal rights; what is to be done with those who do not choose to give up their rights? Plainly, the majority could have no authority to coerce a minority, and government would be an impossibility. Nor could one generation bind the one succeeding it; and each new-born citizen would be rightfully independent of all governmental control until his individual rights should be voluntarily deposited in the common stock.

The authority of civil society is not, then, derived from the individual citizens composing that society. They surrender nothing; society receives nothing. The fallacy in the theory of the "social compact," considered as

an explanation of the origin of civil government, consists in confounding men as *individuals* with men as constituting a *community*.

Wherever an independent community of men can be found there is already civil society. There is no necessity for men to surrender a part of their rights in order to form a basis for authority; the authority exists without any such surrender. In society, man has all the rights which he could have in any state of nature; if any such state of nature out of society can be conceived of. As has been already said, society is the natural state of man. Hence it is of divine origin. It is the intention of our Creator that we should live in society and under government, as it is that the race should be grouped into families, and the child be subject to his parents. "The powers that be are ordained of God." "There is no power but of God." No individual man has any divine right to be a king; but civil government is of divine origin. Whoever exercises legitimately any function of the civil ruler, whether he be king or president, legislator or judge, is exercising an authority which is as divine in its origin as is the authority of a parent over his child.

Civil authority is of divine origin, and it is lodged in the people. It is held by the nation as a whole, and not by them as individuals. Society is not a congress of sovereigns. The power of society does not come from the individual members, but it belongs to the nation as such. The nation receives it from God, as a parent receives from God his right to govern his children. If we suppose that civil society possesses no authority except what has been imparted to it by the individual members, it follows, as we have already seen, that government can not be extended over those who have not surrendered their share of sovereignty. In such a case, majorities would have no right to control minorities. The supposition that civil government rests upon indi-

vidual sovereignty, would thus virtually destroy all governmental authority.

It may be thought that the theory that the authority is in the *community*—the people as a whole—would lead to the other extreme of a social despotism. As, in the other case, the rights claimed for the individual would make government an impossibility, so, here, the rights claimed for the people as a whole would destroy all the rights of the individual citizen. But, although the sovereignty is in the people collectively, they have no right to exercise any authority which God has not bestowed upon them. The parent has no right to govern his child except for the child's good; neither has the nation any right to do any thing which is not for the good of the people. Each member of the community has inalienable rights, with which society has no right to interfere. It is not claimed that all rights come from the state; many do, but some do not. They belong to man as man. Humanly speaking, the sovereignty is in the nation—the people collectively. But this sovereignty is not absolute; it must be exercised in subordination to a higher sovereignty which recognizes the dignity and worth of the human being.

A political community, independent of all others, framing its own constitution, and enacting its own laws without hinderance or question from any other community—in short, a body politic, with no political superior, is a sovereign state or nation.<sup>1</sup> France and England are sovereign nations; so is the United States. The sovereignty is in the *state*, as distinct from the *government* of the state. The people collectively constitute

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<sup>1</sup> The word *state* is used by writers on government to signify a separate political community; it is synonymous with nation. In the United States it is also applied to a member of the American Union. In this volume, when used in the former sense, it will be written *state*; when in the latter, *State*.

the state; the body of men who for the time being are invested by the state with civil authority, constitute the government. The political society exists as a historical fact; thus existing, it frames for itself a constitution and adopts a government. The nation must exist as a separate political community before it can give itself a constitution. The constitution does not constitute the nation, but only the government of the nation. A constitution is an organic law, and presupposes a body politic possessing the authority to enact such a law. The constitution thus made by a nation already existing, prescribes the mode in which the nation determines that its governmental affairs shall be managed. It is a kind of letter of instructions to those who are to act as its ministers in carrying on the government. It is the organic law to which all other laws must be conformed. The constitution is made by the nation for the guidance of the government. The government can not change it, but the nation can.

This distinction between the state, or nation, on the one hand, and the government on the other, is of great importance. The sovereignty is in the nation. As sovereign, the nation may constitute the government according to its own judgment, and give it such form as it pleases. But the sovereignty is in the nation as such, and not in the individual men composing it. The will of the nation is expressed in the constitution, which is the supreme law until the nation chooses to alter it; and this alteration must be made in the mode which the nation has itself prescribed in the same organic law. A large majority of the people may disapprove of a clause in the constitution, but their disapprobation passes for nothing until the obnoxious clause is constitutionally removed from the constitution. The same is true of the laws of a country. They are supposed to be valid until repealed. The constitution is made by the people, and the laws by the government; but both are in force until

changed or repealed by the power that enacted them. The people as a whole do not make the laws, the government does not make the constitution.

Some writers distinguish between the constitution of the nation and that of the government. Jameson calls the first a constitution *considered as an objective fact*. It is the "make-up of the commonwealth as a political organism; that special adjustment of instrumentalities, powers, and functions, by which its form and operation are determined." The second is a constitution *considered as an instrument of evidence*.<sup>1</sup> Brownson says, "The constitution is two-fold; the constitution of the state or nation, and the constitution of the government. The constitution of the government is, or is held to be, the work of the nation itself; the constitution of the state, or of the people of the state, is, in its origin at least, providential, given by God himself, operating through historical events or natural causes. The one originates in law, the other in historical fact."<sup>2</sup>

The constitution of the nation is unwritten. The constitution of the government may be written or unwritten. The constitution of the nation is its character—what it *is*, at any epoch. The constitution of the government is what the nation chooses to make it. As the nation changes, its constitution changes accordingly; and the nation should change its governmental constitution from time to time, to make it correspond with the real constitution. The American nation was in existence a number of years before it formed a written governmental constitution. The present constitution, which went into operation in 1789, has received slight modifications at different times, and will continue to be modified in future years, as the character

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<sup>1</sup>Jameson's Constitutional Convention, p. 66.

<sup>2</sup>Brownson's American Republic, p. 138.

of the nation itself is changed. We shall see, when the mode of amending the Constitution comes to be considered, that ample provision has been made against hasty changes in that instrument. Indeed, there is more reason to apprehend that needed changes will be delayed too long, than that those which are unnecessary will be introduced.

There are various forms of government, differing from each other more or less widely. In a *Monarchy*, the ruler is a single person. An *Aristocracy* is a form of government in which the authority is held by a few. In a *Democracy*, the power is exercised by the people themselves. But most existing governments combine two or more of these forms.

In a monarchy, the whole authority is not necessarily in a single person. Most of the governments of Europe are called monarchies; but in some of them the king has less power than the President of the United States. An absolute monarchy is a despotism. The monarch governs according to his own will and caprice, and not according to established laws. Such a government is clearly illegitimate. It is a government of force. In a limited monarchy, the king, prince, or emperor, or whatever he may be called, though nominally the sovereign, wields a power more or less restricted. Great Britain, and all the provinces subject to it, are called Her Majesty's Dominions. The government is carried on in the sovereign's name. The army and navy are called Her Majesty's troops and ships. But at the same time her real power is small. The laws are enacted by Parliament, and they are administered by the ministers, who are called Her Majesty's government. Parliament is composed of two houses: the House of Lords, which is hereditary, and the House of Commons, which is elective.

A *Republic* is properly a commonwealth. The domain belongs to the nation rather than to the king or the

nobles. It is a government in which the authority is exercised by the representatives of the people. It differs from a *Democracy* in this, that in the latter the power is exercised by the people themselves, while in the former the people elect representatives to act for them. A pure democracy can exist only in a small territory, where all the people can meet and enact laws. A republic may be democratic or aristocratic. If suffrage is universal, if the rulers are elected by the whole people, the government is a democratic republic. In proportion as suffrage is restricted, and the number of voters diminished, the government becomes less democratic and more aristocratic.

Most existing governments are, to some extent, republican, although at the same time monarchical. Louis Napoleon, late emperor of the French, held his office by election. The people of France made him emperor by their votes. The monarchs of England rule by hereditary right: the members of the House of Lords hold their seats by virtue of their birth, but the members of the House of Commons are elected. The government is thus at the same time monarchical, aristocratic, and republican; but in its republican part, it is more aristocratic than democratic, as a large part of the people are deprived of the right of suffrage. Macaulay calls the Roman emperors republican magistrates named by the senate.

Our own government is peculiar. John Quincy Adams speaks of it as "a complicated machine. It is an anomaly in the history of the world. It is that which distinguishes us from all other nations, ancient and modern." Dr. Brownson says, "The American Constitution has no prototype in any prior constitution. The American form of government can be classed throughout with none of the forms of government described by Aristotle, or even by later authorities. Aristotle knew only four forms of government: Monarchy,