

Public Opinion and Democratic Statesmanship

[I]t is the reason, alone, of the public, that ought to control and regulate the government.

Publius, 1788¹

Deliberative democracy is a system of popular government that fosters rule by the informed and reasoned judgments of the citizenry, by what Madison called “the cool and deliberate sense of the community.”² The fundamental premise, or central proposition, of deliberative democracy, as sketched in chapter 2, is that there are two kinds of public voice in a democracy—one more immediate or spontaneous, less well informed, and less reflective; the other more deliberative, taking longer to develop, and resting on a fuller consideration of information and arguments—and that only the latter is fit to rule. Those who created the American constitutional system believed that on most issues, most of the time, deliberative majorities would not exist independently outside of government, but rather would be formed through the operation of the governmental institutions, as the representatives of the people reasoned about public policy for their constituents. These two points explain Madison’s claim that in a well-designed republic “the public voice, pronounced by the representatives of the people” would often be “more consonant to the public good than if pronounced by the people themselves.”³ Because representatives have the time, information, and institutional environment to reason together on issues facing the nation, the public voice to which they give expression may better promote the public good than the immediate and direct voice of the people.

Madison’s argument applied today would mean that public attitudes measured by an opinion poll are likely to be less deliberative and less conducive to the public good than public

attitudes informed and deepened through the operation of representative institutions. The very term "public opinion" implies the existence of developed public attitudes. Yet when attitudes are measured by an opinion poll, they may represent little more than the aggregation of hundreds of off-hand, unreflective responses to a pollster's questions.

Consider, for example, how a national polling organization would measure "public opinion" on the desirability of initiating a comprehensive national health insurance program. It is likely that 500–1500 phone calls would be made to a nationally representative sample of homes. The respondents, interrupted from other activities and totally unprepared for the subject, would be asked one or more questions to gauge their support for a national program to ensure health care coverage for all Americans. It would be surprising if most respondents had read or thought much about the arguments on each side of this issue prior to the telephone call, or, if they had, if they could instantaneously recall the pertinent issues. Most respondents, consequently, would voice spontaneous reactions, unsupported by any serious reasoning about the arguments pro and con. Indeed, it could hardly be otherwise. Men and women who might be quite capable of reasoning about the merits of national health insurance if exposed to, and given ample time to reflect upon, the relevant information and arguments are not likely to produce a deliberative opinion instantaneously. Yet the results of 500–1500 of these instantaneous reactions will be aggregated to portray "public opinion" on national health insurance. Replace this issue with any other of at least moderate complexity—welfare reform, auto emission controls, the Strategic Defense Initiative, etc.—and the point is the same. We should not be surprised if instantaneous opinion bears little resemblance to what would result from serious reasoning on the merits.⁴

In his perceptive account of the role of public opinion in American politics in the late nineteenth century, the British analyst James Bryce describes unreflective public opinion this way:

The simplest form in which public opinion presents itself is when a sentiment spontaneously rises in the mind and flows from the lips of the average man upon his seeing or hearing something done or said. Homer presents this with his usual vivid directness in the line which frequently recurs in the *Iliad* when the effect produced by a speech or event is to be conveyed: "And thus any one was saying as he looked at his

neighbour." This phrase describes what may be called the rudimentary stage of opinion. It is the prevalent impression of the moment. It is what any man (not every man) says, *i.e.*, it is the natural and the general thought or wish which an occurrence evokes⁵

At this rudimentary stage, public opinion is not the result of "conscious reasoning," but rather is little more than "impressions formed on the spur of the moment."⁶ Later, by reading newspapers and talking with friends and acquaintances, individuals begin to move from first impressions to more settled views. If the issue is one of public policy, the opposing sides will vie for public support as the main lines of debate are formed and party allegiances take hold. In the end a majority of the people may endorse one side or the other. According to Bryce, however, the average man makes little independent contribution to this process of opinion formation. His beliefs have been largely influenced by "what he has heard and read," and the "element of pure personal conviction, based on individual thinking, is but small."⁷

To Bryce the chief and overriding impediment to the average citizen's deliberations on public matters was not lack of capacity but lack of time: "The citizen has little time to think about political problems. Engrossing all the working hours, his avocation leaves him only stray moments for this fundamental duty. . . . [H]e has not leisure to do [his thinking] for himself."⁸ No matter how capable the average citizen might be of thinking through and reaching informed judgments on major policy matters, the reality is that the demands of earning a livelihood leave little time for independent analysis of public issues. This would be true even if the average citizen had a compelling interest in public matters; but, according to Bryce, this is hardly the case: "to the great mass of mankind in all places, public questions come in the third or fourth rank among the interests of life, and obtain less than a third or a fourth of the leisure available for thinking."⁹ The problem is exacerbated when issues of substantial complexity are at stake; for some issues "require uninterrupted and what may be called scientific or professional study"¹⁰ and others, such as financial matters, bankruptcy rules, and transportation policy, require substantial "constructive skill."¹¹ "Public opinion," Bryce writes, "is slow and clumsy in grappling with large practical problems."¹²

These three impediments to citizen deliberation on policy issues—severe time constraints, competing interests for leisure time, and the degree of complexity involved in many legislative and administrative

matters—effectively undercut, in Bryce's view, the key premise of "orthodox democratic theory": that "every citizen has, or ought to have, . . . a definite view, defensible by arguments, of what the country needs."¹³ What the people in a large and heterogeneous democracy can contribute to public policy is not detailed direction resulting from substantial independent deliberation but rather "a sentiment grounded on a few broad considerations and simple trains of reasoning." This sentiment is more likely to be influenced by broad considerations of "justice, honour, and peace" than by "any reasoning [the people] can apply to the sifting of the multifarious facts thrown before them, and to the drawing of the legitimate inferences therefrom."¹⁴

Obviously, much has changed in the United States since Bryce's account of the late nineteenth century. The work week has shortened, affording Americans greater leisure time. Educational attainment, measured by years of formal schooling, has risen substantially. Mass electronic communications have replaced newspapers as the principal information source on public issues. Compared to his counterpart of a century ago, the average American today has more leisure, more education, and more information about public affairs. Nonetheless, it would be a mistake to overstate the impact of these changes on the problem of citizen deliberation. The average American may now work an hour or two less per day (and perhaps one day less per week) than in Bryce's time, but once commuting time, meals, errands, and family time are factored in, the "leisure" available for the study of public policy is at most a few hours each weekday evening and a few more on weekends. Moreover, the same technological developments that have given us mass communication of information on current events have also resulted in the creation of an entertainment industry, especially television, that effectively competes for the attention of the citizenry. Indeed, accounts of the early nineteenth century suggest that Americans of the time, faced with fewer entertainment options, were exposed to more serious political discussions in the form of speeches, lectures, and debates than is the case today. In any event, it is likely that new competition for the attention of the citizenry has more than offset the net gain in leisure time from a century ago.

Finally, even if one concedes that Americans are now better educated and more informed about public affairs than ever before (not an unquestionable proposition), it must also be acknowledged that technological advancement, the rise of the United States as a world power, and the expansion of the domestic responsibilities of the national government

(social welfare, health and safety, economic management, etc.) have vastly increased the number, breadth, and complexity of public policy issues. This presents a formidable impediment to public attention, understanding, and deliberation.

We have seen, for example, how in Congress itself most legislators faced with voting on hundreds of complex issues have limited opportunities to review in any sustained way the information and arguments that bear on issues outside of the committees on which they serve. If those whose full-time responsibility it is to monitor and review policy proposals face such impediments, we should not be surprised that the average citizen, with but a few hours a week to devote to public affairs, engages in little independent deliberation on complex national issues. On a complex matter like the Nixon administration's Family Assistance Plan, discussed in previous chapters, we should expect little more from the average citizen than a generalized sentiment on the need for welfare "reform," for a national income floor for all Americans, or for a larger federal role in promoting the welfare of the poor. Yet these sentiments, derived from a host of miscellaneous influences—radio and television coverage, newspaper reading, magazine stories, the views of "opinion makers," conversations with acquaintances, and personal experiences or prejudices, etc.—hardly constitute the kind of reasoning on the merits of public policy that ought to control governmental decisions. Again, the problem is not the intellectual capacity of the average American to reason about public policy, but rather time constraints, competition for leisure time, and the number and complexity of public policy issues.

It is important here to distinguish between deliberation about the details of complex national laws and deliberation on simpler issues or on matters closer to home and over which citizens exercise greater responsibility. Elihu Root, for example, who served for six years in the U.S. Senate after stints as Secretary of War and Secretary of State in the McKinley and Theodore Roosevelt administrations, argued against such democratic devices as the initiative and referendum but in favor of the people themselves deciding "certain great simple questions which are susceptible of a *yes* or *no* answer" such as "where a capital city or a county seat shall be located" or "whether the sale of intoxicating liquors shall be permitted." We might think now of such straightforward matters as whether to limit congressional terms or whether to legalize currently illicit drugs. Yet on normal legislative matters the problem is not determining "what ought to be accomplished" but "how to accomplish it." This necessarily involves the "study and investigation" of "the working

of a great number and variety of motives incident to human nature" and "complicated and often obscure facts." Moreover, new laws impinge upon the existing body of laws in ways that are not obvious without detailed analysis. Thus, for Root, "the only method by which intelligent legislation can be reached is the method of full discussion, comparison of views, modification and amendment of proposed legislation in the light of discussion and the contribution and conflict of many minds." In a democracy such a process was much more likely to be found in representative legislative bodies than among the citizens directly.¹⁵

In addition to Root's "great simple questions" susceptible to simple yes or no answers, average citizens are obviously quite capable of deliberating on juries, where they are taken away from their normal pursuits to focus their attention for some hours or days on matters of great importance to criminal defendants or civil litigants. Jurors in criminal cases, for example, are made keenly aware of how profoundly their judgment can affect the life of the defendant. The vesting of such weighty matters in the hands of average citizens can hardly help but to concentrate the mind and promote serious deliberation.¹⁶

Similarly, local matters like public school policies or locating highways may have sufficient impact on the lives and interests of ordinary citizens as to create a powerful incentive to devote time and attention to the issue and to argue the merits of the opposing sides with family members, friends, and neighbors. Yet as the scope of the policy widens, from neighborhood to town (or city), to county, to state, and to nation, each individual's responsibility for the result diminishes to the infinitesimal (one in two hundred million or so), thus weakening the kind of incentive necessary to invest heavily in the reading and research to become well informed.

The point here is not to dispute the capacity of American citizens to reach sound judgments about their own interests, the public good, or justice, but rather to clarify the impediments to public deliberation about the details of national policies and thus the necessity for a large institutional role in determining and fashioning "the cool and deliberate sense of the community." Since the conflict between Federalists and Anti-Federalists over the ratification of the Constitution of 1787, Americans have vigorously, and at times passionately, debated the relative importance of direct citizen opinion versus the judgments of public officials in determining the course of national policy. The full contours of this debate must remain beyond the scope of this volume.¹⁷

Given the impediments to public deliberation on the details of na-

tional policies, and thus to the formation of a deliberative public opinion, what, then, must political leaders do to foster the rule of deliberative majorities in the United States?

The Responsibility of Legislators

In American representative democracy, national legislators serve, in effect, as surrogate deliberators for their constituents. Where the citizenry lack the time, the institutional environment, and perhaps the interest to deliberate in depth on public issues, legislators are expressly chosen to devote their full care and attention to public matters. They have the responsibility to review information and arguments on legislative proposals and to exercise their best judgment on behalf of those whom they serve. This deliberative imperative, this duty to deliberate, is an intrinsic element of the American constitutional order. It carries major implications for the behavior of the members of the House and Senate and especially for how they relate to public opinion while carrying out their representative responsibilities.

First, it bears directly on how legislators spend their time. If lawmakers are to meet their deliberative responsibilities, they must keep fundraising efforts, meetings with constituents, and frequent trips home from crowding out essential deliberative activities such as attending committee hearings and floor debates, studying key information and arguments on legislative proposals, and, generally, entering into reasoned exchange with their colleagues. Sound deliberation is uncompromising in the demands it places on the time and attention of lawmakers. Because the deliberative imperative dictates that legislators devote a substantial portion of their work time to serious reasoning about the merits of legislative proposals, a legislator who fails to do so forfeits an essential responsibility to his constituents. Thus, it is a mistake to view constituency service as legislators' only responsibility to those they represent. Legislators who properly understand their duty to their constituents will not allow the ombudsman role to squeeze out the activities necessary for sound deliberation.

Second, legislators must not delegate excessive deliberative responsibilities to staff. It can hardly be doubted that representatives and senators need policy information and advice from staff. Not only do too many issues come to the floor for each member to monitor and analyze in advance, but most legislators would find it impossible without staff support even to stay abreast of the issues that come before the committees and subcommittees on which they serve. In such a situation the temptation

can be strong to delegate the essential deliberative function to staff, with the member reserving to himself or herself only a final review, through a staff briefing, prior to voting in committee or on the floor.

Yet legislators are not elected merely to cast votes based on staff recommendations. Rather, their responsibility is to exercise their own reason and judgment on behalf of their constituents. There is no assurance, after all, that a decision arrived at primarily through staff deliberation and recommendations will be identical to one that the legislator would have reached on his or her own by personally engaging in the deliberative process. Although most high-level staff likely share the basic policy dispositions of their principals, some may in fact have personal policy agendas at variance with the elected official or beliefs that are more ideological or doctrinaire and thus less amenable to compromise. Since congressional staff are not elected by or accountable to the citizenry, excessive delegation to staff raises questions about democratic control of governmental decisions. At the very least such delegation adds another stage between the public and policy; at worst it severs the link between governmental deliberations and public interests and sentiments by handing over the deliberative process to a publicly unaccountable body.

Thus, the vast expansion of staff in Congress in recent decades poses serious issues for the linkage between democracy and deliberation in the American political system. Moreover, as Michael Malbin has argued, even if staff aides faithfully represent the political views and interests of those for whom they work, their sheer number and importance in Congress have replaced direct face-to-face discussion and deliberation among representatives and senators, rather common not so long ago, with staff negotiations "in which each party is trying to achieve the best deal for his own side."¹⁸ Rather than experienced elected officials from throughout the country coming together to articulate the interests of their constituents, share their experiences and judgments with one another, and reason toward common goals, "we see members relying on staff technocrats . . . whose knowledge of the world is limited to what they learned in school or from other participants in the specialized Washington issue networks." In turn, "we see politicians taking general positions, leaving the details to staff, claiming credit, and learning about the impact from their constituents. . . . Instead of thrashing it all out before the fact, the members too often do not know enough of the details they would need to deliberate until after a program is implemented."¹⁹ Concomitant with, and at least partly the result of, staff growth has been a "weakening of deliberation" in an institution "that works best when it responds to con-

stituents' needs and interests in a setting that encourages the members to think more broadly."²⁰

The role of staff in policy deliberations within the national government nicely highlights the potential tension between democracy and de-liberation. Few would dispute that if the elected members of the House and Senate delegated all deliberative functions to their aides and simply rubber-stamped staff recommendations, the American Congress would per force be a less democratic institution. Yet in some circumstances decisionmaking by staff may more closely approximate the deliberative ideal of reasoning on the merits than decisionmaking by elected officials. Indeed, we have seen how well the staff that was assembled under Secretary of the Treasury Donald Regan deliberated on the fashioning of the administration's proposal for income tax reform in 1985. Not one member of the group, including Regan himself, was an elected official. Had this proposal originated with the elected members of Congress, rather than in the executive branch, it is unlikely that this issue, which affected so many powerful interests, would have been as thoroughly and as fairly analyzed with a view to serving the national interest in tax reform. It may be wondered, then, why deliberation within Congress would not be well served by a similar staff-dominated decision process.

The issue here is how far one can go in the direction of rule by professionals or experts, wherever located in the federal government, without undermining the regime's fundamental democratic character. It is one thing for the president, an elected official, to delegate the formulation of a detailed proposal to his aides and quite another for the members of the House and Senate, elected to make the nation's laws, to delegate the decisive decisionmaking power to those they appoint to their personal and committee staff. What emerge as proposals from the executive branch, which must after all be cleared by the Office of Management and Budget or, on important matters, by the president himself, are merely recommendations to the Congress. No matter how many professionals or experts contributed to their formulation, the lawmakers in the Congress retain complete formal authority to enact the proposals virtually as is, to amend them, or to reject them. It is at this stage that the interests and desires of the American people must be brought to bear through their elected officials, where deliberation and democracy must be conjoined. There is some point, however hard to define, beyond which the growth of staff influence in Congress necessarily undermines this conjunction of deliberation and democracy.

The third implication for the behavior of legislators is that they must

be open to what they can learn from their colleagues and others and thus must be willing to reach conclusions that deviate from, and perhaps contradict, their original dispositions. When the deliberative process commences, legislators cannot know where it will lead. Reasoning through the information and arguments brought to their attention may solidify original dispositions, modify them, or in some cases show them to be inconsistent with good public policy. Since legislators' initial policy positions are likely to mirror those of their constituents, their deliberations may result in policy positions at variance not only with their initial opinions but also with the views of those they represent. This is a fundamental and recurring issue for deliberative democracy. It is why, for example, members of the House and Senate are not, under the U.S. Constitution, recallable between elections, as were the delegates to the national Congress under the Articles of Confederation. A fixed term of office assures legislators that they will not be immediately disciplined by their constituents for responsibly carrying out their duties. It also gives them some time to explain the soundness of their views to constituents, potentially fostering a more informed and deliberative public opinion (more on political rhetoric and public opinion below).

Fourth, the duty to deliberate well may often be inconsistent with attempts to conduct policy deliberations on the plane of public opinion. Formal legislative deliberations in the contemporary Congress—committee hearings, markup sessions, and floor debates—are, with few exceptions, now conducted in public. This necessarily creates multiple audiences for every question, comment, or speech delivered in a committee room or on the floor. These audiences include the legislators in attendance, other members of the full body, interest groups, the media, the members' own constituents, and the American public more generally. Although sound deliberation demands that legislators address each other with reasoned appeals, the openness of the legislative process creates incentives to curry favor with interest groups or to posture before outside audiences. This can take the form of what David Mayhew calls "position taking"—making "pleasing judgmental statements."²¹

Posturing, or position taking, is hardly a new phenomenon in the U.S. Congress. "In all assemblies," wrote James Bryce a century ago, "one must expect abundance of unreality and pretence, many speeches obviously addressed to the gallery."²² Indeed, according to Bryce, the House of Representatives was more prone to this kind of behavior than any comparable legislative body: "it talks and votes . . . as if every section of American opinion was present in the room."²³ As a result, "a set speech

upon any subject of importance tends to become not an exposition or an argument but a piece of elaborate and high-flown declamation."²⁴ This was less common in the smaller Senate, where the members were better known to each other and possessed a keener sense of the connection between their personal behavior and the actions of the full body. Yet even in the Senate there were "show days":

... a series of set discourses are delivered on some prominent question. Each senator brings down and fires off in the air, a carefully prepared oration, which may have little bearing on what has gone before. In fact the speeches are made not to convince the assembly,—no one dreams of that,—but to keep a man's opinions before the public and sustain his fame. . . . [T]hese long and sonorous harangues are mere rhetorical thunder addressed to the nation outside.²⁵

Such posturing, so common in Bryce's time and in our own, undermines deliberation in several distinct ways. First, it deflects the time, attention, and energy of legislators away from productive deliberative activities. Second, it can make genuine reasoned exchange virtually impossible within formally deliberative forums such as committee meetings. How, for example, can some members coolly and rationally exchange information and debate issues if others are playing to the cameras or trying to make headlines? And third, it degrades the deliberative process by reducing argument and persuasion to the plane of unreflective public opinion, often resulting in oversimplifications, distortions, and, at times, outright appeals to passion and prejudice.

This points to the broader issue of the relationship of secrecy and its opposite, accountability, to sound deliberation, a matter that was touched upon in the discussion of markup sessions in chapter 6 and in the treatment of the deliberative capacities of the executive branch at the end of chapter 7. Next to the desire to democratize power in the House and Senate, the most powerful idea driving the massive institutional reforms of the 1960s and 1970s in Congress was the demand for "government in the sunshine." Secret meetings, such as markup sessions and conference committees, should be ended; public meetings of committees or the full bodies ought to be open to electronic broadcast so that the widest possible audience could observe Congress in action; and votes in committee and on the floor should be recorded so that constituents could hold their representatives accountable for their actions. All this was accomplished. But while these changes were being made, few either inside the institu-

tion or out asked how they would affect Congress's core responsibility to deliberate well for the nation. The drive for accountability—and therefore less secrecy, more recorded voting, and more publicity—rests on one or both of two premises. One stems from democratic theory: If the people are to control their elected officials, they must know what their representatives and senators are doing on their behalf. Because it is the job of legislators to carry out the wishes of their constituents, they have no basis for making important decisions insulated from public view. The second premise, though related to the first, is less principled and more cynical: Legislators cannot be trusted to do what is right for their constituents or the nation on their own. Behind the closed doors of a markup session or during the effectively anonymous voting in Committee of the Whole in the House, they will "sell out" their constituents or the broader public in order to curry favor with some powerful interest group for some narrowly self-interested reason: campaign funds, organizational support for upcoming campaigns, future employment possibilities, etc.

If, however, we take seriously the deliberative responsibilities of national legislators, particularly in light of the tension between democracy and deliberation, we may come to view the issue of secrecy and accountability somewhat differently. For example, if we begin not with the democratic premise that the people have a right to monitor every official act of their representatives or with its cynical variant that legislators are not to be trusted, but rather with the view that most lawmakers who serve in Congress genuinely desire to promote the public good, then the question becomes whether the glare of public scrutiny and formal accountability for every vote in committee and most votes on the floor contributes to or hinders deliberation in service of the public good. Indeed, we can identify in principle a variety of ways in which maximizing accountability and publicity can harm deliberation or, conversely, ways in which insulating legislators to some degree from public scrutiny can support and enhance deliberation within Congress.

First, maximizing publicity can, as we have seen, promote posturing at the expense of genuine reasoning about the public good. To put it differently, when meetings are not held in public—like markup sessions and conference committee meetings for most of the history of Congress—or when the audience of open meetings is limited to those in attendance—like committee hearings and floor debates until radio and television were allowed in a few decades ago—the serious substantive lawmaker who has "done his homework" takes precedence over his less

studious colleague with a knack for publicity. This can only be good for sound deliberation on public policy.

Second, the opening up of the legislative process can make lawmakers much more directly accountable to interest groups whose support they may need for reelection. Lobbyists, after all, now actually sit in on committee markup sessions. This may constrain the policymaking efforts of lawmakers to actions that serve the interests of narrow groups at the expense of the broader public good. It must be recognized that there is no way to open up the legislative process to the people without also opening it up to lobbyists and interest groups.

Third and similarly, by making lawmakers more directly answerable to their specific geographic constituents, greater accountability and publicity may make it more difficult for these putatively "national" legislators to reason together and work toward policies in the broad national interest. If national policy ought to be merely the aggregation of the perceived interests of the geographic parts of the nation, then there is no problem. But if there is such a thing as a national interest in areas like defense policy, international trade, domestic economic policy, responsible budgeting, or social welfare that cannot be reduced to the perceived interests of the geographical parts of the nation, then it is the responsibility of those we send to the House and Senate to reason together about how to achieve it. Such collective deliberation will be rendered impossible if the members of the House and Senate are, like ambassadors from sovereign states, bound down in their day-to-day policymaking efforts to what is acceptable to their geographic constituencies.

What was absent in the 1960s and 1970s in Congress as the old ways were swept aside was an understanding of the tension between democracy and deliberation and therefore a recognition that "reforms" that make the American governmental system more democratic may not enhance the deliberation that is necessary for democracy to be successful. We are now living with the consequences of this shortsightedness, as a growing body of evidence is demonstrating.

One study, for example, argues that making the markup sessions of the House Appropriations Committee public has exacerbated budget problems by decreasing "committee members' willingness to reject spending requests." In addition, requiring recorded voting in Committee of the Whole has led to "more votes by those lacking knowledge about and interest in the issues before them" both because of the dramatic increase in the number of recorded votes and because members fear the electoral consequences of being recorded absent.²⁶ Several other studies have

documented how "government in the sunshine" has significantly increased the access and influence of lobbyists, and therefore interest groups: "The idea was to make the process more 'democratic,' but in practice, sunshine measures intensified the access of lobbyists."²⁷ "We now know," concludes another author, "that open meetings filled with lobbyists, and recorded votes on scores of particularistic amendments, serve to increase the powers of special interests, not to diminish them." He adds that "the increased reliance on recorded votes has actually made it easier for narrow groups to hold legislators accountable because most of these votes are on particularistic amendments."²⁸ A study of tax policy in Congress showed how "the sunlight of open meetings" meant that the members of the Ways and Means Committee in the House "could now be held accountable for their positions on every provision that made up a tax package. In short the . . . Committee was easier to penetrate, particularly by organized interests, and much less autonomous. In turn, the committee could no longer provide cover for House members."²⁹

The opening up to public scrutiny of the markup sessions of the House Ways and Means Committee is especially interesting because this is one of the few reforms in Congress that has subsequently been rolled back: in 1983, after a decade of open markups, the committee returned to closed sessions. Since then, "all major tax legislation has been drafted in closed session."³⁰ Why this change against the grain of openness and accountability that so dominated the reform period? To put it most simply, the committee, wishing to act responsibly on tax matters, had learned how enhanced accountability to interest groups and constituents had undermined collective deliberations about national tax policy. As reported to the author of the most recent book-length study of the Ways and Means Committee, the members found it difficult in open sessions "to support measures that might impose costs on their own constituencies or groups that had provided support in past elections." Complex tax issues that involved competing interests could not be solved "in front of an audience." In closed sessions, on the other hand, the members could "avoid some of the direct responsibility for imposing costs on constituency interests or group allies." As one committee member related about closed sessions: "A member can enter a mild protest about the defeat of an amendment he might otherwise feel compelled to support . . . Then, when the markup is over, the member can go out into the hall and say to the lobbyist, 'I worked to get your amendment adopted but I just got outvoted.'" In a word, closed markups allowed the members "to take a broader view of the issues" and to think less "about the posturing, about

satisfying someone sitting there watching you." Committee members were convinced that returning to closed markups reduced constituency and interest group pressures, enhanced deliberations about the national interest in tax policy, and resulted in better policy outputs.³¹

Contrary to this general line of argument, however, it could be maintained that reducing secrecy in Congress promotes deliberation by reducing the opportunities for logrolling, making side payments, or other kinds of "wheeling and dealing." It is rare, after all, for such deal making to be conducted in the open, which is testimony to the force of the public norm that legislation should be decided on its merits. If bargaining can be forced out of the formal legislative channels through the disinfectant of publicity, then perhaps congressional deliberation will benefit.

There are two problems with this argument. First, there is no reason to believe that if bargains cannot be made in committee meetings, for example, they will not be made somewhere else. Phone calls and private meetings in congressional offices provide plenty of insulation from public scrutiny and thus ample opportunity to strike deals. Second, as Woodrow Wilson argued in his famous critique of the late-nineteenth-century Congress, it is principally *public* deliberation—"the instruction and elevation of public opinion"—that benefits when Congress operates openly, rather than internal congressional deliberation.³² Consider, for example, the question period in the British Parliament. This public opportunity for the opposition to question the prime minister and the cabinet, now even televised, serves not so much to improve the quality of reasoning about policy within Parliament as to inform the broader community about the government's policies and plans.

It must be emphasized that the point here is not that one cannot have at the same time both democratic accountability and sound reasoning about public policy. Indeed, the American constitutional system was consciously designed to accommodate both principles or goals. Rather, the issue is what kind and degree of popular control, of public accountability, is appropriate in a democracy whose governing institutions must retain the capacity to reason well about laws and their administration. As noted earlier, the proper test of legislative responsiveness in a deliberative democracy is whether the results of the deliberations of the lawmakers approximate what the majority of citizens would have decided if they had engaged in the same reasoning process. Yet if lawmakers are properly to carry out their deliberative responsibilities for the citizenry, they must to some extent be protected against the intrusions of unreflective public opinion. The institutional environment in which they work must allow,

and even encourage, legislators to proceed wherever reasoning on the merits leads, even if this is some distance from initial public sentiments. The results, though at times inconsistent with unreflective public attitudes, may be the best approximation that can be achieved of deliberative public opinion, of the "cool and deliberate sense of the community."

If we are not used to thinking about the positive benefits of secrecy for deliberation in Congress, we are more willing to accept the connection between secrecy and deliberation in other contexts. The secret ballot in democratic elections, after all, was intended to free voters from pressures that might distort their decisions from judgments on the merits of candidates for public office. Similarly, within Congress itself leadership contests are usually decided by a secret ballot of the members of each party within each branch. Yet, it could be argued, such secret voting renders the rank-and-file members unaccountable to their constituents in their choice of party leaders. Allowing secret ballots sacrifices accountability in favor of protecting the individual's private judgment of the merits of candidates for leadership positions. Indeed, the U.S. Constitution itself was written in secret, and although a journal was kept (not published until 1819), votes were recorded only by state, with no indication of individual votes. Delegate George Mason's reasons for opposing the recording of individual votes is instructive: "such a record of the opinions of members would be an obstacle to a change of them on conviction."³³ Maximizing public accountability could impair sound deliberation. The point of these examples is not that Congress would function more deliberatively if it simply closed the doors and stopped recording votes, but rather that the drive for maximum openness and accountability is not an unmixed blessing. Those responsible for making Congress more accountable over the past several decades have thought too little about also making Congress more deliberative and about the ways in which accountability can threaten deliberation.

The relationship of secrecy and accountability to sound deliberation within Congress is but one example, though perhaps the most important, of how the structure, procedures, and rules of the House and Senate affect the capacity of these institutions to deliberate well for the nation they serve. Another is the proliferation of subcommittees in Congress in the decades after the legislative reorganization of 1946 substantially reduced the number of full committees. This proliferation spread legislators so thin, especially in the Senate, that it is impossible for the members to keep up even with the business before their own

committees and subcommittees. Between the mid-1950s and the early 1990s the average number of committee and subcommittee assignments per House member more than doubled, from 3.0 to 6.8, and per senator increased about 40 percent, from 7.9 to 11.0.³⁴ As a result, attendance at committee hearings is often notoriously low (it can be difficult even to get a quorum at markup sessions) and lawmakers defer more and more to staff for information and direction. As noted earlier, deliberation is uncompromising in the time demands it places on lawmakers. If they spend half as much time at twice as many hearings and markups, they will of necessity be less well informed about more matters for which they bear a formal responsibility and on which they vote at the crucial stages in the legislative process. In this way, the empowerment of the members may undermine the deliberativeness of the lawmaking process.

One could make a similar argument about the practice of legislating through those "omnibus" bills in which a myriad of distinct measures are brought together into one legislative package of such length and complexity that few who vote for it understand its contents. Granted that in a body like Congress some deference must be shown by rank-and-file members to the recommendations of committees (or else the committee system would collapse), if a legislative proposal gets too large and complex and contains too many distinct provisions, it will become virtually impossible for the reporting committee to inform the members adequately through the committee report and floor debate of the contents of the bill and the reasons supporting its passage. At this point the kind of reasoned judgment that the full membership can make about committee recommendations in a deliberative body becomes nothing more than blind deference.

As the catalogue of institutional features near the end of chapter 5 suggests, until recent decades the members and leaders of Congress understood well how important it was to structure the legislative environment to foster responsible lawmaking and a national outlook. But as power has been democratized and public scrutiny enhanced, there has been too little attention both within Congress and without to the institutional requisites of sound deliberation.

The Political Executive and the Bureaucracy

The question of how political leaders ought to promote the rule of deliberative majorities, and therefore how they ought to relate to public opinion, is not restricted to the legislative arena. Those in the executive

branch confront the same issue, although in a different form, and make their own distinctive contribution.

By the very nature of the executive branch, the deliberations that occur within it are less closely tied to public sentiments or to the views of external groups than the deliberations within Congress. This is largely because the electoral principle does not extend as deeply into the executive branch as it does into the legislature. With the exception of the president and vice president, the principal players in the executive branch—White House staff, high-ranking political appointees in the departments and agencies, and senior careerists—owe their positions to appointment or to advancement in the career service.³⁵ Thus, high-level political executives and senior careerists are not individually accountable to the electorate. Their career interests are less affected by what those outside the governing institutions think of them than is the case for elected representatives. Consequently, they do not face the same pressures as those in Congress to embrace, or at least to mollify, either generalized popular sentiments or the views of specific external groups. Moreover, as noted previously, the secrecy of most executive branch deliberations insulates the decision process from public attention and influence in a way that is uncharacteristic of deliberations in Congress. This relative insulation of executive branch deliberations from public scrutiny presents special challenges to executive branch decisionmakers.

Because there is less public posturing and less deference to unreflective public opinion within the White House and the administrative agencies than within Congress, officials of the executive branch have greater freedom and opportunity to promote the kind of expertise, systematic analysis, and long-range view of the public good that is essential to sound political deliberation. To a substantial degree this is done through the permanent bureaucracy, which, at its best, is a repository for practical wisdom about problems of governance derived from years of firsthand experience. As the late Herbert J. Storing has argued, "the civil service is one of the few institutions we have for bringing the accumulated wisdom of the past to bear upon political decisions."³⁶ In carrying out its deliberative function the bureaucracy is benefited by a "degree of insulation from shifting political breezes." The thoughts and actions of civil servants, who have a *de facto* life tenure, are "not governed so strictly as [are] that of the political executive by periodic elections. Their position enables them to mitigate the partisanship of party politics, and it gives them some protection from the powerful temptation, to which the party poli-

tician is always subject, to serve the people's inclinations rather than their interests."³⁷

If, however, some insulation from public opinion can be beneficial to deliberation, it can also create problems for democratic control. There remains the danger that the deliberations of career civil servants will bear little relationship to public sentiments and desires. Storing's response is that the civil service in the United States does not represent a distinct will or spirit independent of the broader political community. On the contrary, "the American civil service . . . represent[s] the American society with a fair degree of faithfulness." Indeed, "the interests, opinions, and values of civil servants are intimately bound up with those of the community as a whole."³⁸ It must be admitted, nonetheless, that the same degree of insulation from public sentiments that promotes decision-making through expertise and systematic analysis creates a potential for narrowness of view, rigidity of approach, and ideological commitment inconsistent with fundamental public desires.

Thus, the issue of the conjunction of deliberation and democracy takes opposing forms in Congress and the bureaucracy. In Congress the predominantly democratic character of the decisionmaking process creates environmental influences and personal incentives not always congenial to serious-minded deliberation. In the bureaucracy, on the other hand, the same institutional features that promote sound deliberation create conditions that may impair democratic control.

Political executives, like legislators, have a responsibility to foster the rule of deliberative majorities. In so doing, they must understand both the contribution that the bureaucracy makes to this end and the corresponding danger that it poses. Their task is to promote an atmosphere of genuine deliberation within the bureaucracy by encouraging and supporting the development of substantive expertise, the rational analysis of information and arguments, and decisionmaking through reasoned persuasion. This requires protecting the deliberations of career civil servants from political forces and pressures that might undermine reasoning on the merits, much like the way Treasury Secretary Donald Regan protected his small band of deliberators, which included both political appointees and careerists, in the development of the Treasury I tax reform proposal. On the other hand, because career civil servants are not directly accountable to the community, the political executive must be especially alert to signs that a civil servant's attachment to external interests or personal ideology have intruded upon and distorted the deliberative process. The deliberations of the men and women who constitute the

career service, like the deliberations of congressional staff, will not necessarily result in conclusions consistent with what a deliberative majority would have decided.

Presidential Actions

Although the White House staff, department and agency heads, other high-level political appointees, and civil servants all contribute to executive branch deliberation, the president alone possesses the constitutional authority to take binding executive actions. The Constitution vests the chief executive with authority to enforce the laws, make nominations to high office, pardon offenses, recommend measures to Congress, receive ambassadors, and command the Armed Forces. In carrying out these tasks presidents exercise their personal judgment, informed by the facts and arguments brought to their attention through the presidential advisory process. What relationship is there, then, between the judgment and actions of presidents and deliberative majorities? What is, and what ought to be, the connection between presidential decisions and public opinion?

When the framers vested the executive power in an office with indefinite reeligibility, a term longer than any state governor's, substantial independent powers, a salary that could not be changed by Congress during any one term, and a mode of election independent of the legislature, they sought to ensure that presidents would act on the basis of their independent judgment and will. Freed from the "unbounded complaisance"³⁹ to the legislature so common among state governors and somewhat insulated from direct popular control, presidents were to function as constitutional officers, responsibly and independently carrying out their duties. However respectful presidents might be of widespread public sentiments or of strongly held congressional opinion, for actions properly within the executive sphere they were to be guided by their own best understanding of what the national interest required. As Hamilton put it, "the executive should be in a situation to dare to act his own opinion with vigor and decision."⁴⁰ At times such actions might take the form of temporary resistance to popular, if unwise, measures or actions pushed by the people or Congress to allow time for "more cool and sedate reflection."⁴¹ In other cases the discordance between presidential judgment and public or congressional desires might endure throughout the president's term, creating an issue for the next election, especially if the incumbent was running again.

As elaborated in chapter 2, the capacity of constitutional officers to re-

sist public desires, at least for a time, was intended not to create a governing will independent of the people themselves but rather to promote rule by deliberative majorities by protecting them against the follies of unreflective public opinion. The president's four-year term and indefinite reeligibility were intended to foster the kind of long-range view of the public good that ought to guide the citizenry itself but is often overcome by more immediate, or transient, impulses and desires. In this respect the president was to be like the Senate, and both were to serve as a counterbalance to the most popular branch, the House of Representatives.

DELIBERATION, REPRESENTATION, AND SEPARATION OF POWERS

In one respect, however, the president is unique, even by comparison with the Senate; for he alone represents the entire nation, something to which no single representative or senator can lay claim. For Jefferson it was especially the president who "command[ed] a view of the whole ground."⁴² The president's representational uniqueness, his identity with the nation as a whole, fits him, more than any other single political figure, to articulate and promote the deep-seated values and goals of the American citizenry—values and goals that may be overmatched or overshadowed by more tangible and immediate political or economic interests within a congressional district or state.

This representational difference can be the source of significant conflict between Congress and the presidency. President Jimmy Carter discovered this when he sought to subject congressional decisions on water projects of great interest to local communities—projects such as building dams, dredging rivers, and improving harbors—to a rational assessment of national water policy needs. Intense congressional opposition thwarted any serious change in existing practice. In this and like controversies both of the political institutions seem to reflect public opinion, but in two different ways. During the water policy controversy, Congress, it is reasonable to argue, effectively gave voice to the millions of citizens who wanted better flood control, cheap hydroelectric power, improved irrigation of farmlands, more efficient water transportation, and expanded outdoor recreational activities. The presidency, on the other hand, articulated the generalized public sentiment for economy in government and for rational and coherent national policies, a sentiment likely shared even by those who favored the water projects.

This dichotomy in public sentiments—institutionally manifested in separation of powers conflicts—is not limited to issues such as water

policy. Indeed, some maintain that it is a pervasive feature of the modern American social welfare state and even that it helps to explain why the electorate has opted for divided party government more often than not in recent decades. The voters, it is argued, send large majorities of Democrats to Congress to provide services and goods while they elevate more conservative Republicans to the White House to promote economy in government and restraints on taxation. (It is impossible at this time to know whether Bill Clinton's election to the presidency in 1992 is, like Jimmy Carter's election in 1976, an aberration from the current norm of divided government or a return to the more usual historical pattern of one-party control.)

Thus, conflict between Congress and the presidency may represent a clash among competing values, interests, or goals of the citizenry itself, reflecting such dichotomies in public opinion as (1) the interests of the parts versus the whole, (2) considerations of short-term versus long-term benefits, and (3) the desire for goods and services versus a recognition of costs and limits. In this respect the kind of deliberation fostered by American separation of powers is not unlike the deliberation that occurs within an individual who is forced to assess and balance competing issues or benefits at stake in some decision or course of action. In so far as this balancing is essential to sound deliberation, separation of powers conflicts may actually promote the formation of deliberative majorities.

LINCOLN AND THE CIVIL WAR: PRESIDENTIAL ACTIONS AND DELIBERATIVE MAJORITIES

The framers' distinction between surface public opinion and deeper deliberative opinion was at the core of their understanding of government and politics and, accordingly, central to their institutional design. As we have seen, it was hoped that the relatively lengthy terms of office for the president and senators together with their indirect modes of election would give these officials the institutional capacity to resist nondeliberative impulses or demands of the people, thereby allowing time for reason and justice to prevail. As wielders of the executive power, presidents would be enabled to resist unreflective surface opinion as they sought to promote the deeper and more reasoned goals and values of the American people.

This is, for example, precisely how Abraham Lincoln's biographer, Lord Charnwood, described his actions during the critical Civil War year, 1864.⁴³ Three long years of war and very heavy casualties in Grant's campaign against Lee in Virginia had sapped public confidence in the war

effort and weakened the North's resolve to press on to complete victory. Responding to this public dissatisfaction in the spring and early summer of 1864, Republican party leaders seriously considered replacing Lincoln as the party nominee for president for the November election. The Democrats, who nominated General George McClellan for the presidency in August, sought to gain political advantage by adopting a platform that decried "four years of failure to restore the Union by the experiment of war" and called for an immediate "cessation of hostilities." About the same time Lincoln, who had received the Republican nomination the month before, was advised by leaders of his party that his election was hopeless. The chairman of the central Republican Committee even recommended to Lincoln that he make overtures for peace.

Throughout this troubling time Lincoln remained steadfast. He absolutely refused to initiate any overtures to the South for a negotiated settlement or to enter into any discussions initiated by the other side that did not concede the inviolability of the Union and the abolition of slavery. Moreover, fearful that McClellan would succeed him in March of 1865 and negotiate an end to the war on terms that would ultimately undermine the Union or preserve slavery, Lincoln moved vigorously to end the war militarily before March.

We have no systematic public opinion data from 1864. If we had, it might well show that by the summer of that year a majority of the people had lost confidence in Lincoln's handling of the war (a "failed presidency"?) and were willing to reach an accommodation of some sort with the South. The president, however, refused to conform his actions to the shifting public sentiment and resolutely pursued a firm and unambiguous course of action. If Lincoln was right in insisting upon the end of slavery and the indestructibility of the Union, this might appear to be simply the case of a wise leader acting on the basis of his personal understanding of the common good contrary to less wise public desires. Yet Charnwood's interpretation suggests a more complex view:

And to those Americans of all classes and in all districts of the North, who had set their hearts and were giving all they had to give to preserve the life of the nation, the political crisis of 1864 would seem to have been the most anxious moment of the war. It is impossible—it must be repeated—to guess how great the danger really was that their popular government might in the result betray the true and underlying will of the people; for in any country (and in America perhaps more than most) the average of politicians, whose voices are

most loudly heard, can only in a rough and approximate fashion be representative.⁴⁴

Here Lincoln, by refusing to follow the shifting public attitudes, was a more authentic representative of "the true and underlying will of the people" than those with their fingers on the pulse of the citizenry. In Charnwood's view, Lincoln was

the embodiment, in a degree and manner which are alike rare, of the more constant and the higher judgment of his people. It is plainer still that he embodied the resolute purpose which underlay the fluctuations upon the surface of their political life.⁴⁵

In a narrow sense Lincoln's insistence on pursuing total victory throughout 1864 in the face of growing public opposition might appear undemocratic. If, however, one accepts the central principle of deliberative democracy—that surface opinion may bear little semblance to deliberative judgments and that only deliberative opinion ought to rule—then Lincoln's actions appear in a very different light. Indeed, if Charnwood's interpretation is sound, then Lincoln's behavior stands as a quintessential example of political leadership in a deliberative democracy. Despite "the fluctuations upon the surface" of the political life of the nation, the "true and underlying will" and the "resolute purpose" of the people remained unchanged. Unswayed by the change in the surface views, Lincoln remained true to the "higher judgment," the more deliberative opinion, of the citizenry.

Lincoln's actions of 1864 were ultimately vindicated, not only by the judgment of history but also in a very tangible way by his overwhelming reelection in November (55 percent of the popular vote and 212 of 233 electoral votes). What explains this apparently massive shift of public opinion between August of 1864, when Lincoln seemed a sure loser, and November, when he became a big winner? While some part of this shift was certainly due to Northern success on the battlefield (Atlanta fell to General Sherman in September), another may have been the result of the public deliberation that the approach of the election and the campaign itself fostered. Elections, like hangings, concentrate the mind. They force the electorate to review an incumbent president's record, to reflect upon his policies and character, and to make considered judgments about whether he or his opponent will better serve the nation. The result is likely to be a more deliberative assessment of a leader's performance than one normally finds between elections. This public

deliberation is fostered by the rhetorical activity that accompanies a presidential campaign. And although in Lincoln's time it was not yet acceptable for presidential candidates to campaign personally for office, others did so on their behalf: "men of high character conducted a vigorous campaign of speeches for Lincoln."⁴⁶ Lecturing at Yale in 1907, Secretary of State Elihu Root described presidential election campaigns as the "greatest, most useful educational process ever known in the world . . . [during which millions of voters] are engaged for months in reading and hearing about great and difficult questions of government, in studying them, in considering, and discussing, and forming matured opinions about them." This educational process lays "the solid foundation of sound judgment, sober self-restraint, and familiarity with political questions among the governing mass."⁴⁷

The events of 1864 recall not only the framers' desire for leaders to resist unsound public desires until "reason, justice, and truth [could] regain their authority over the public mind,"⁴⁸ but also Hamilton's defense of a substantial term of office for the president. "Between the commencement and termination of [a four-year term]," Hamilton wrote, "there would always be a considerable interval in which . . . [a president] might reasonably promise himself that there would be time enough . . . to make the community sensible of the propriety of the measures he might incline to pursue." The president, like Lincoln in 1864, would convince the citizenry of the rightness of his actions not through rhetorical persuasion, but rather by "establishing himself in the esteem and good-will of his constituents" through "the proofs he had given of his wisdom and integrity."⁴⁹ Four years ought to be enough time for the people to recognize the fruits of wise leadership. It is through performance, not persuasion, that the president would merit reelection.

Political Rhetoric and the Formation of Deliberative Majorities

Hamilton's failure to promote rhetorical leadership in his systematic defense of a strong presidency in the *Federalist Papers* was not through inadvertence; for the framers believed that political rhetoric was more of a threat than an aid to the formation of deliberative majorities. This view may seem odd to the contemporary student of politics; for upon first consideration, it might appear that political rhetoric is at least beneficial, if not essential, to the functioning of deliberative democracy. Insofar as political rhetoric takes the form of instruction or reasoned persuasion, it would seem to be productive of public deliberation and thus of reasoned and informed public judgments. Indeed, reflecting the sentiments that

led Theodore Roosevelt to describe the nation's highest office as a "bully pulpit," modern Americans particularly expect their presidents to be rhetorical leaders—guiding, instructing, and inspiring the citizenry. As the focus of public and media attention, presidents, it is believed, are in a unique position to address the citizens on public affairs, to appeal to their better natures, and to seek their support for farsighted policies to promote the commonweal. By acting as a kind of national schoolmaster, the president can promote the formation of deliberative majorities.

In contrast to this modern expectation that presidents and other public officials ought to promote public deliberation through rhetoric, most of those who wrote the American Constitution neither intended nor desired that the nation's leaders engage in frequent direct rhetorical contact with the citizenry. Cognizant that the public at large lacked the time and information necessary for sound deliberation on the specifics of national policy and that average citizens were much more subject to misinformation, deception, prejudice, passion, and demagogic appeals than were their representatives, they believed that the best sort of political deliberation would occur mainly *within* their carefully crafted institutions. The lessons of the history of popular governments and the experiences of the "critical period" had confirmed the dangers of conducting public policy on the plane of public opinion. As noted in chapter 2, in the newly independent American states men with "talents for low intrigue, and the little arts of popularity" had risen to public office by appealing to public disenchantment over taxes and debts and by promising simplistic cures for economic ills. In some states they managed to gain control over public policy and to push through measures that reflected the unwise and short-sighted sentiments they had helped to incite.

In the framers' view this experience amply demonstrated that a too direct linkage between public sentiments and public policy was a danger to governments "wholly and purely republican." In providing that linkage, popular rhetoric lay about as a ready but dangerous instrument by which ambitious men with little to commend themselves to their fellow citizens but their skill at inflaming popular prejudices and passions could rise to power and direct public policy. Moreover, if rhetoric bound the people and their officials together into a close union of sentiment and opinion, this would undermine the leader's ability to withstand public desires on those occasions when the people's inclinations and interests did not coincide. Because of these kinds of dangers, the framers rejected popular rhetoric as a normal or regular means of "refin[ing] and enlarg[ing] the public views." Rather, they put their stock in representation

and in institutional design for moderating and elevating public attitudes and desires and thus achieving just and effective republican government.

Although framers like Madison and Hamilton did not deny the possibility of a popular rhetoric of reasoned persuasion, they feared that if popular oratory were encouraged, deliberative rhetoric would not hold its own against irresponsible passionate appeals. The great threat to popular government was that the "*passions*, . . . not the *reason*, of the public would sit in judgment. But it is the reason, alone, of the public, that ought to control and regulate the government."⁵⁰ Rhetoric was dangerous precisely because it was the principal means of inflaming passions, of appealing to envy and prejudice. "In the ancient republics," Hamilton wrote, "where the whole body of the people assembled in person, a single orator, or an artful statesman, was generally seen to rule with as complete a sway as if a scepter had been placed in his single hand." But these ancient orators neither gained nor maintained their rule because they excelled at public instruction and reasoned persuasion. On the contrary, because of "infirmities incident to collective meetings of the people . . . [i]gnorance [is] . . . the dupe of cunning, and passion the slave of sophistry and declamation."⁵¹ When orators rule, it is because they are masters not of reason and argument, but of cunning, sophistry, and declamation.

It must be acknowledged that the kind of "hard" demagoguery feared by the framers is not now the problem in the United States it once was.⁵² Few modern American politicians, at the national, state, or local level, seem to harbor the truly dangerous ambitions of the demagogue and, accordingly, few engage in rhetorical efforts to foment envy of the propertied classes or to incite racial or ethnic hatred or prejudice. Certainly the growth of a large middle class, whose members appreciate the importance of property rights and of sound economic and financial policies, has had a moderating effect on American politics and has softened popular rhetoric.⁵³ In addition, the universalistic character of the American creed—"All men are created equal"—has helped to foster a sense of what it means to be a citizen of the United States in a way that has resisted, albeit not always successfully, a politics of divisiveness.

To say, however, that there is little genuine demagogic rhetoric in contemporary American politics is not to say that deliberative rhetoric is the norm. Indeed, the framers' concerns about the nature and quality of popular rhetoric are perfectly analogous to the frequently voiced complaint that modern campaign rhetoric in the United States ignores the "real issues" in favor of personalities, unrealistic promises, manipulation

of symbols, charges of unethical behavior, and distortions of opponents' records. This charge is leveled against both paid campaign commercials and face-to-face debates. In fact, campaign debates bear so little the character of reasoned argument that reporters and commentators frequently make light of the label itself, preferring to describe these events as "joint appearances" or "joint press conferences."

Several major contemporary studies of the popular rhetoric of those elected to Congress and the presidency tend to confirm the relative infrequency of deliberative rhetoric. Between 1970 and 1977, Richard Fenno traveled with eighteen members of the House of Representatives to their districts to observe how the legislators interacted with their constituents. About two-thirds of the visits took place during the fall election period. Although Fenno did see "a few instances" of education, or reasoned persuasion, by legislators, "the only generalization supportable by the evidence," he wrote, "is the apparent paucity of educational effort."⁵⁴ Similarly, in his study of presidential campaign rhetoric that focused on the elections of 1960 through 1976, Benjamin Page reached conclusions consistent with the view that genuine reasoned persuasion is not common:

the most striking feature of candidates' rhetoric about policy is its extreme vagueness. The typical campaign speech says virtually nothing specific about policy alternatives; discussions of the issues are hidden away in little-publicized statements and position papers. Even the most extended discussions leave many questions unanswered. In short, policy stands are infrequent, inconspicuous, and unspecific. Presidential candidates are skilled at appearing to say much while actually saying little.

In most campaign speeches, much of the verbiage consists of descriptions of problems, promises to attain general goals, criticism of the opponents' past performance, and lavish praise for the past performance of the candidate's own party.⁵⁵

Perhaps the most interesting study in this respect is Jeffrey Tulis's analysis of the character of presidential speeches in the nineteenth and twentieth centuries. Tulis categorized speeches according to whether they manifested a "developed argument" that "moved logically from beginning to end," a "series of arguments" but no overall argument, or were simply a "list of points" strung together.⁵⁶ In his sample of 336 presidential speeches from the twentieth century, Tulis found that not a single

one could be classified as a "developed argument" and only 11 percent of the speeches were a "series of arguments." By contrast, 55 percent of the speeches were a "list of points" and 34 percent were a combination of a series of arguments and a list. When all inaugural addresses and State of the Union messages were analyzed separately, 9 percent of those delivered in the twentieth century were judged to be "developed arguments" and 18 percent a "series of arguments." In the nineteenth century the corresponding figures were much higher: 21 percent and 74 percent respectively.⁵⁷ Although we should be careful not to infer too much from the mere classifying of speeches in this manner, the conclusion would seem to follow that relatively few speeches and addresses of modern presidents bear a formally deliberative character (whether or not well argued or persuasive).

If, as the evidence here suggests, popular deliberative rhetoric by national legislators and presidents is a relatively rare phenomenon in the United States, this would seem to confirm the views of Madison, Hamilton, and other leading framers that civic instruction by political leaders through reasoned persuasion is not a necessary day-to-day activity in a deliberative democracy. Does it follow, then, that because popular deliberative rhetoric is relatively rare in the United States that it is entirely incidental to the success of American democracy?

Contrary to the principles of the leading framers, according to which popular deliberative rhetoric would play no formal role in the governing of the new nation, American statesmen from the beginning have demonstrated by their actions a belief in the utility, and perhaps necessity, of at least occasional efforts to guide and instruct the citizenry through rhetoric. The most famous early example is President Washington's "Farewell Address," which was issued as a written message on the ninth anniversary of the signing of the Constitution by the delegates to the Philadelphia Convention and was disseminated throughout the nation. In what he described as the "counsels of an old and affectionate friend," Washington sought to instruct his fellow citizens in the principles and actions necessary to preserve the blessings of liberty achieved through years of war, civil strife, constitutional change, and the beginnings of effective self-government for the new nation. He appealed to his countrymen to preserve the union, "the palladium of your political safety and prosperity"; to reject alterations in the government that would "impair the energy of the system"; to guard against the spirit of faction and party; to recognize that religion and morality are "indispensable supports" to "political prosperity"; to promote "institutions for the gen-

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eral diffusion of knowledge" so that "public opinion should be enlightened"; to preserve sound public credit; and to "observe good faith and justice to all nations."⁵⁸

This major effort of civic instruction, issued on the very eve of Washington's departure from public life—indeed, in the very address announcing his decision not to run for a third term—stands virtually alone among Washington's presidential speeches and addresses. Only his First Inaugural Address, which provided a natural opportunity for the incoming president to address the nation on the virtues of union and the new constitutional order, provides a comparable example from the first president of public instruction through rhetoric. It is revealing that when the occasion for such a speech was repeated after his reelection in 1792, Washington delivered what still stands as the briefest Inaugural Address in the history of the presidency—a mere four sentences, totalling 133 words. It is virtually unthinkable that a modern president would shrink from any such opportunity to speak to the people.

Nonetheless, however reluctant Washington was to engage in popular rhetoric of any sort throughout his service in the executive office, the drafting and issuance of the Farewell Address evidences a belief that some public benefit might well result from efforts at civic instruction through rhetoric. Washington himself had rather modest expectations of the impact of his words. Not likely to make a "strong and lasting impression," or to "control the usual current of the passions," at best they might produce "some partial benefit, some occasional good" as the arguments of the address "now and then recur to moderate the fury of party spirit, to warn against the mischiefs of foreign intrigue, [and] to guard against the impostures of pretended patriotism."⁵⁹

Washington's successors also tended to engage in popular deliberative rhetoric sparingly, limiting such occasions principally to inaugural addresses. One of the most noteworthy examples occurred just four years after Washington left office when Thomas Jefferson and his supporters, seeking to reverse "monarchic" trends in the administration of the national government, engineered what Jefferson called the "revolution of 1800"—a kind of refounding of the regime on Jeffersonian-republican principles. Upon taking office after his party had won this "contest of opinion" by capturing the House, Senate, and presidency from the Federalists, Jefferson sought in his Inaugural Address to heal partisan wounds by emphasizing common beliefs and principles: "[E]very 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." He went on to detail the "essential principles of our Government," which would shape the new administration. These included, among others: "equal and exact justice to all men"; no "entangling alliances" with foreign nations; "the support of the State governments in all their rights"; "the preservation of the General Government in its whole constitutional vigor"; "absolute acquiescence in the decisions of the majority, the vital principle of republics"; "economy in the public expense"; "encouragement of agriculture, and of commerce as its handmaid"; "the diffusion of information"; and freedom of religion and of the press. These principles, according to Jefferson:

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.⁶⁰

The other inaugural address that rivals in importance the first of Jefferson's was delivered by Abraham Lincoln on the eve of the nation's greatest crisis. Between Lincoln's election to the presidency in November of 1860 and his inauguration on March 4, 1861, seven southern states had formally "seceded" from the union. This was one month before the fall of Fort Sumter, the secession of four more states, and the beginning of full-scale hostilities. After reassuring the southern states that he had no intention of interfering with slavery where it already existed, Lincoln used his First Inaugural to present a masterful case against secession. After refuting the argument that secession had a constitutional or legal basis, Lincoln got to the heart of the matter:

Plainly the central idea of secession is the essence of anarchy. A majority held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people. Whoever rejects it does of necessity fly to anarchy or to despotism. Unanimity is impossible. The rule of a minority, as a permanent arrangement, is wholly inadmissible; so that, rejecting the majority principle, anarchy or despotism in some form is all that is left.⁶¹

Secession, then, was nothing less than a contradiction of the bedrock principle of republican government: majority rule. Anarchy was its certain result as disaffected minorities would continually break away from majorities with which they disagreed. Although Lincoln's rhetoric failed

to persuade southerners of the evils of secession, it may have been helpful in convincing northerners why a portion of the country, desiring to sever its bonds with the rest, ought not simply to be allowed to go its own way.

The most notable early examples of popular deliberative rhetoric by presidents other than through inaugural addresses occurred during Andrew Jackson's administration. As we saw in chapter 7, Jackson's message to Congress in 1832 announcing his veto of the bill rechartering the Bank of the United States was addressed to the people over the heads of their representatives. (Its popular character is amply demonstrated by the fact that it became a Democratic campaign document in the 1832 election.) And although this lengthy document ended with a passionate attack on the rich and powerful, most of the message was a substantial, detailed critique of the Bank on constitutional and policy grounds. Thus, as a rhetorical appeal it was both popular and deliberative, at least in large part. On other occasions, also, Jackson utilized formal addresses to make deliberative appeals to the citizenry. Such addresses included his annual messages to Congress, his proclamation on the attempt by South Carolina to "nullify" federal law, and his "protest" to the Senate contesting its authority to censure him for ordering the secretary of the treasury to remove the public funds from the Bank of the United States three years before its charter was to expire.⁶²

Presidents, of course, are not the only public officials who engage in popular rhetoric. This was as true in the republic's first century as it is now. Moreover, although the governing norms at the beginning discouraged popular rhetoric for all national officials, this injunction applied less severely to members of the House and Senate than to presidents. Thus, candidates for the House and Senate were personally campaigning for office through speeches and debates in the early nineteenth century, more than a half century before this became acceptable for those aspiring to the presidency. Indeed, it can be argued that the most consequential popular deliberative rhetoric of nineteenth-century America came not from a president, but from a private citizen and former Whig congressman from Illinois. This refers, of course, to the speeches of Abraham Lincoln in the 1850s on slavery, which culminated in his famous seven debates in the 1858 Senate campaign with Stephen Douglas, the incumbent senator in Illinois and a national leader of the Democratic party.⁶³

Just a year before the Illinois Senate campaign, the U.S. Supreme Court's *Dred Scott* decision had created a political crisis for the nation by

ruling that Congress had no authority to prohibit slavery in the territories, thus overturning the famous Compromise of 1850. Douglas responded to this controversy by basing his campaign for reelection to the Senate on "the great fundamental principle" of "self-government" or "popular sovereignty": "that the people of each State and each territory of this Union have the right . . . of regulating their own domestic concerns in their own way, subject to no other limitation or restriction than that which the Constitution of the United States imposes upon them."⁶⁴ The strength of Douglas's position was that it seemed to provide the basis for reconciling the views of North and South and thus defusing the controversy over the extension of slavery. Lincoln believed strongly otherwise. Throughout the campaign he sought to persuade the people of Illinois that the nation was at a critical turning point on the issue of slavery. The founders, he maintained, had recognized the fundamental injustice of slavery and had looked toward its ultimate extinction. Slavery violated the deepest principle of the American nation—the equality of all men—and it ought not to be extended to any territory or state where it did not then exist. "[T]here is no reason in the world," Lincoln insisted, "why the negro is not entitled to all the natural rights enumerated in the Declaration of Independence, the right to life, liberty, and the pursuit of happiness."⁶⁵ In frequently quoting his antagonist's declaration that he "cares not whether slavery is voted down or voted up," Lincoln insisted that Douglas's position, at bottom, was one of moral indifference to slavery. Should Douglas's views be embraced by the American people, Lincoln maintained, this would amount to a repudiation of the principles of the Declaration of Independence, thus undermining the cornerstone of the freedoms enjoyed by Americans and eventually leading to the extension of slavery throughout the country.

In Lincoln's view what was at stake in his rhetorical clash with Douglas was much more than a seat in the U.S. Senate. (The actual election was by state legislators, who in their own campaigns were pledged to one candidate or the other.) This was nothing less than a grand contest to shape "the public mind" on matters of the deepest importance to American democracy. At the time of the founding the public mind recognized the injustice of slavery, was committed to restricting its spread, and "rest[ed] in the belief that it was in the course of ultimate extinction."⁶⁶ But that old view of the founding generation had been progressively undermined by the relentless pressure of the slave interest to extend its domain, by the promulgation of a school of thought that slavery was a positive good, and by views of prominent political leaders like Douglas

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who professed a moral indifference to the extension of slavery. Lincoln's challenge, as he saw it, was to limit the "influence [Douglas] is exerting on public sentiment":

In this and like communities, public sentiment is everything. With public sentiment, nothing can fail; without it nothing can succeed. Consequently he who moulds public sentiment, goes deeper than he who enacts statutes or pronounces decisions. He makes statutes and decisions possible or impossible to be executed.⁶⁷

Or, as Lincoln had put it two years before: "Our government rests in public opinion. Whoever can change public opinion, can change the government, practically just so much."⁶⁸

Although Lincoln lost the Senate race, the campaign achieved two large purposes. First, by getting Douglas to affirm that the people of a territory could prevent slavery by denying it the protection of positive law—contrary to the rights of slave holders as enunciated in the *Dred Scott* decision—Lincoln was able to drive a wedge between Douglas and southern Democrats, thereby undermining Douglas's prospects for national leadership on the slavery issue and later election to the presidency. Second, Lincoln's forceful defense of the anti-slavery position earned him fame outside of Illinois and greatly assisted in his nomination and election to the presidency in 1860.

Conclusion:

Democratic Statesmanship and Deliberative Democracy

The first seven decades of national life under the Constitution of 1787 had witnessed periodic popular struggles over the fundamental principles of American democracy. These "contest[s] of opinion," to use Jefferson's term, did not stop with the ratification of the Constitution, as many of the leading framers had expected and indeed wished, but went on to include the Jeffersonian and Jacksonian "revolutions" of the early nineteenth century and the struggle over the slavery issue in the 1850s. Later, such contests of opinion recurred during the Progressive era of the late nineteenth and early twentieth centuries, Roosevelt's New Deal of the 1930s, the civil rights struggles of the 1950s and 1960s, and the Reagan "revolution" of the 1980s. However well the framers' institutional design, with its focus on deliberation within and between the branches of government and its injunction against popular rhetoric, may have worked during the "normal" times between these contests, these

struggles over the public mind have called forth a type of popular leadership for which the architects of the Constitution did not plan.

The kind of communitywide deliberation involved in these periodic renewals, or even re-foundings, of the American polity unavoidably places rhetorical demands on national leaders. Unless one posits that all political development in a democracy is necessarily beneficent, then one must accept the possibility that over time a once democratic people could lose their commitment to the twin pillars of freedom and equality of rights that sustain republican government. At those decisive historical moments when the very character of deliberative public opinion is at issue, it is not enough for political leaders simply to reflect and articulate the underlying will or judgment of the people. Certainly Lincoln's great fear in the 1850s was that even deliberative public opinion would embrace a position of moral neutrality toward slavery, in direct contradiction of the deepest principles of the nation. *Molding* the "cool and deliberate sense of the community," not merely responding to it, became at this critical juncture the highest task and the most profound responsibility of democratic statesmanship.

When fundamental regime principles are at stake in a democracy, public interest in and attention to the business of government increase dramatically, and national elections become contests for the public mind. The functioning of the institutions necessarily becomes a secondary matter as the basic direction of national policy is decided by the election returns. Whether the decision is for good or for ill cannot be known in advance, for in the end there is nothing in human nature or in how deliberative democracy is structured that can guarantee the wisdom of popular deliberations. We are led to conclude that deliberative democracy must be guided by a body of thought—an understanding of individual rights, of the duties of citizenship, and of the means and ends of self-government—that is external to itself and that is the basis, at least occasionally, of popular statesmanship of the highest order.