

THE ORIGINS OF AMERICA'S GOVERNING DISCOURSE¹

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*The tradition of the West is embodied in the Great Conversation that began in the dawn of history and that continues to the present day.*²

—Robert Maynard Hutchins

Introduction

American political discourse is part of the Western tradition of conversation. It began in the colonial era, developed during the founding era, and has matured in the 250 years since the colonies declared independence. America's three founding documents—the Declaration of Independence, the Constitution, and the Bill of Rights—are the foundation of the political discourse that governs America. The effort to recapture an American governing discourse fosters national unity; enhances debate among legislators, citizens, and students; contributes to the perpetuation of America's constitutional republic and thus upholds the tradition of a self-governing people. It is also a means of confronting assaults on discourse, which cripple and may well destroy the constitutional republic should they succeed. This essay examines the origins of America's governing discourse, which includes both habits and content. It begins with understanding discourse as used in this context, tracing its development in colonial America and in the schools described by Alexis de Tocqueville in *Democracy in America*, and responding to pleas for discourse and actions on behalf of those who, from the earliest settlements to the twentieth century, were not heard.

Discourse

Simply defined, discourse is a “communication of thought by words.” It comes from the Latin, meaning a run back and forth or to run about (*discurrere*). It can be informal discussion or conversation but also formal dialogue

and debate. The former is prevalent among all people, but the latter draws on traditions in Western civilization.

The word dialogue derives from the Greek: *dia* meaning through and *logos* meaning speech or reason. The appeal to reason goes beyond mere discussion and encourages serious inquiry. The best-known example is Socratic dialogue between two or more people. It often includes a “what is” question to frame the inquiry: what is virtue, what is courage, what is justice. While Socratic dialogue pursues wisdom, dialogue also includes the more general aims of discovering an answer, seeking knowledge or direction, clarifying beliefs or actions, or judging something to be true or false. “*Logos*,” reason, guides the inquiry and serves as a measure in the search for answers.

An early example of dialogue in America is from John Adams’s statement in *Thoughts on Government*. “We ought to consider, what is the end of government before we determine which is the best form.”³ The dialogue begins by casting the first part of the sentence as a question: “What is the end of government?” It continues by framing the second part as another question: “Which is the best form of government?” To the former, Adams responds: “the happiness of society is the end of government, as all Divines and moral Philosophers will agree that the happiness of the individual is the end of man.” To the latter, he asserts: “the form of government, which communicates ease, comfort, security, or in one word happiness to the greatest number of persons, and in the greatest degree, is the best.” Adams died two hundred years ago, but the question—Are Adams’s pronouncements on the end of government and the best form true?—is still current and begins the dialogue anew for those living in America’s constitutional republic today.

Debate occupies an equally important place in political discourse. It comes from the old French word *debatre*, “to beat.” Its confrontational nature stems from opposing positions or arguments that initiate the exchange. Thucydides’s *Peloponnesian War* is among the finest examples of a book that relates the actions of political and military leaders and others through their speeches and debates. The Athenian statesman Pericles praises the practices in the Funeral Oration: “instead of looking on discussion as a stumbling-block in the way of action, we think it an indispensable preliminary to any wise action at all.”⁴ Among the most well-known debates in American politics is the exchange between Abraham Lincoln and Stephen Douglas, commonly referred to as the Lincoln-Douglas debates. The two men debated the principles of the Declaration of Independence in a nation divided over slavery. The nation was in the throes of wrestling with the future of slavery, and

while the two men did not settle the issue, they are examples of Americans engaging in consequential debates.

The focus in this essay is on the development of discourse in the era that preceded independence and its use in understanding and preserving the American regime. Calvin Coolidge observes in his 1926 speech on the 150th anniversary of the Declaration of Independence:

Our forefathers came to certain conclusions and decided upon certain courses of action which have been a great blessing to the world. Before we can understand their conclusions we must go back and review the course which they followed. We must think the thoughts which they thought ... the mind of the people was not so much engrossed in how much they knew, or how much they had, as in how they were going to live.⁵

Coolidge acknowledges the influence of Scripture on the forefathers, but how they were going to live also depended on their political and communal lives as a people in British America. We recapture their thoughts by understanding how their habits of discourse developed and how the content of their discourse changed to meet new circumstances. Many of the colonists' practices from the era preceding independence, a sampling of which is discussed below, contributed to their self-governing habits and the governance of their political affairs. These practices supported them in assuming the separate and equal station announced in the 1776 Declaration. The emphasis is necessarily on their political practices given the broader discussion of governing.

Origins and Practices of Discourse in Early America – Part I

Groups of colonists settled independently of each other in what came to be known as the New England, Middle, and Southern colonies. The origins of colonial development were economic, religious, and defensive. Each colony had grants of authority from the British Monarch in the form of commercial corporations, proprietary charters, or royal colonies controlled by the crown.⁶ Governance took place within the colonies, but the British Parliament regulated and controlled their commercial and regional interests through Acts, British Governors and other officials in the colonies, and general oversight.⁷ Whether enforcement was lax or strict depended on the monarchical rulers and parliamentary majorities as well as the needs of the Empire. The colonists' varied experiences in governing as British Americans included pledging allegiance to Britain, serving as local colonial

representatives, participating in local governance and colonial legislatures, developing formal procedures, and the British extending rights as the following examples demonstrate.

It was a common practice throughout the colonies that their governing bodies “submit to the realm,” and thus maintain their allegiance to Britain. The 1621 Ordinances of Virginia have this description: “to imitate and follow the Policy of the Form of Government, Laws, Customs, and Manner of Trial, and other Administration of Justice, used in the Realm of England, as near as may be, even as ourselves, by his Majesty's Letters Patent, are required.”⁸ Similar language is in the 1703 journal recording New Jersey's first assembly session: “Gentlemen, you are now met in General Assembly on purpose to prepare such Bills to be passed into Laws, to be Transmitted into England for Her Majesty's Approbation, as may best conduce to the Settling of this Province upon a lasting foundation of happiness and Quiet; only I must recommend it to you. That the Bills you shall think fit to offer may not be repugnant to the Laws of England, but as much as may be agreeable to them.”⁹ While the early colonists were in a country with few traditions, they were schooled in their new homeland by a centuries-old political system, which included a parliament. The original Middle English meaning of parliament is discourse or consultation; the Old French word *parlement* comes from *parler*, to speak. While there was no “parliament” established in America upon independence directly comparable to the British Parliament, the practice of speaking in the assembly and conferring with other political bodies and their constituents was central to the colonial governing experience for decades.

The House of Burgesses in Virginia is among the earliest examples of a governing body with local colonists serving as representatives.¹⁰ The Constitution for the Council and Assembly in Virginia describes the selection of the burgesses. “And this Council ... shall consist for the present of the said Council of State and of two burgesses out of every town, hundred and other particular plantation to be respectfully chosen by the inhabitants.”¹¹ The 1654-55 Laws of Virginia include the following requirements for representatives: “That the persons who shall be elected to serve in Assembly shall be such and no other then such as are persons of knowne integrity and of good conversation and of the age of one & twenty yeares.”¹² Colonial charters also directed the establishment of representative assemblies and participation from local inhabitants. The Charter of Maryland (1632) granted the Baron of Baltimore the power to “Ordain, Make, and Enact Laws ... with the Advice, Assent, and Approbation of the Free-Men of the same Province.” The Charter for the Province of Pennsylvania (1681)

allowed for laws to raise money for public use and others related to the public state, peace, or safety “by and with the advice, assent, and approbation of the Freemen of the said Countrey, or the greater parse of them, or of their Delegates or Deputies, whom for the Enacting of the said Lawes, when, as often as need shall require.”¹³ The practice of drawing from the local populations to serve in government laid the foundations of discourse in both political bodies and communities beginning in the colonial era, a practice that continues today.

The colonists did not necessarily have experience with formal procedures, however. The South Carolina Commons House of Assembly in 1692 published several rules of conduct for members regarding attendance, behavior, bills before the Assembly, and speaking. They begin:

1. “When any man Intends to Speake he is to Stand upp Uncovrd and to Address himselfe to the Speaker, who: Usually calls such [per]sons by name: that the House may take notice who itt is that Speakes
2. If more than one Stands upp att once the Speaker is to Determine who was up first upp & he is to Speake & y^e: Others Sitt downe . . .
3. When a Memb^r is Speakeing none is to Stand upp or interrupt him till he has done Speakeing and Sate down, and then any other may arise and Speake observing y^e: Rules . . .¹⁴

When discord increased between the British and the colonists (1774-1776) and assemblies under British control could no longer function as they had previously, colonists formed independent provincial congresses. Some members had previously served in assemblies, but not all. A member of the South Carolina Commons House and provincial congress commented that the newer members known as “Back Woods-Men” were “unaccustomed to the formalities of parliament.” The newcomers countered with the observation that “according to their Ideas, every thing might have been completed with extreme facility & no more words than are necessary in the bargain & Sale of a Cow.”¹⁵ The colonists admitted wide variation in their discourse, both formal or informal. This example of contrasting political discourse, what some might distinguish as schooled and unschooled, reflects both the formality of the political body as learned from the British and the colonial underpinnings that were rooted in practical experience.

The colonists remained subject to the political and judicial rule of the British government, but their separation from Great Britain by an ocean required their participation in governing their affairs. Some colonies had greater democratic experiences with early governance. The design of Rhode

Island's legislative process as described in the 1647 Acts and Orders for the Colonic and Province of Providence was initially a "bottom up" system where legislative proposals originated at the local level. "The Towne where it is propounded shall agitate and fully discuss the matter in their Towne Meeting and conclude by Vote." Other towns would review measures that, if passed, would go into effect "till the next General Assembly . . . and there to be considered, whether any longer to stand yea or no."¹⁶ The more typical experiences were in colonial assemblies¹⁷ that afforded opportunities to develop habits of discourse related to drafting laws, presenting petitions, and participating in conventions, while also interacting with the populace whom they represented. These colonial assemblies and legislatures used the English House of Commons procedures and the structure of existing legislatures.¹⁸ Legislators continued these practices after 1776.¹⁹

British procedures also included the use of clerks. Their seemingly mundane tasks served the valuable purpose of supporting the orderly administration of legislative business and informing the public of the formal proceedings of the political bodies in their communities. Several colonies kept legislative journals but regularity in their procedures varied. The growing presence of clerks in colonial assemblies led to improved practices, which included recording proceedings, tracking debates, publishing legislative schedules, keeping detailed minutes of floor debates, and publishing votes and laws.²⁰ The practice of recording proceedings extended to the provincial congresses, which met in the years leading up to independence,²¹ and the subsequent Continental, Confederation, and U.S. Congresses.²²

Finally, beyond the rules of speech and customary participation by members, the idea of speech as a right is also present. In 1702, East Jersey and West Jersey merged into the Royal Colony of New Jersey. At the First Assembly on November 10, 1703, assembly members requested the following of his Excell^{cy}:

Ordered, that the Speaker, in behalf of the House, desire his Excell^{cy} will be pleased to grant them the following and accustomed Rights and privilege, viz^t:

That the Members, with their Servants, may be free of Arrest or Molestation during the Session;

That they have free Access to your Excell^{cy}'s person when Occasion Requires.

That they may have Liberty of Speech, & a favourable Construction upon all Debates that may arise amongst them.

That if any mis-understanding shall happen to arise between the Council and this House, that in such a case a Com^{ee} of the Council may be appointed to Confer with a Com^{ee} of this H^s for the Adjusting and Reconciling such Differences, And That these our Requests may be approved of by your Excell^{cy} & Council, & entred in the Council Books.

The Speaker reported, “according to Order he had Pray^d his Excell^{cy} to Grant the Rights and Privileges of the House as above expressed: And that his Excell^{cy} was pleased to Grant the three first as the Just and undoubted Right of the House.”²³

These rights supported the colonists’ full participation as representatives of their constituents in a governing body. Placing liberty of speech third instead of first gives pause, however. Justice Joseph Story in his *Commentaries on the Constitution of the United States* explains why being present was of paramount importance:

When a representative is withdrawn from his seat by a summons, the people whom he represents, lose their voice in debate and vote, as they do in his voluntary absence. When a senator is withdrawn by summons, his state loses half its voice in debate and vote, as it does in his voluntary absence. The enormous disparity of the evil admits of no comparison. The privilege, indeed, is deemed not merely the privilege of the member, or his constituents, but the privilege of the house also.²⁴

Story’s explanation emphasizes the significance of discourse within representative government. His comparison of losing the representative’s voice to an evil justifies listing it first. The other point to note is that the British granted these rights to the colonists; they were not deemed inalienable.

These examples, drawn from various colonies and over an extended period, are representative of the experiences that contributed to forming the habits and practices of discourse by the colonists in British America within legislative bodies and among the people. Their subservience to the realm circumscribed the content of their discourse, but changes were in the offing.

Origins and Practices of Discourse in Early America – Part II

Events within and beyond the borders of British America contributed to significant changes in the content of colonial discourse. First, the economic and population growth in the colonies increased demands in the colonial assemblies for legislation on matters within their borders. Second, the

greater change was with respect to relations with the British that was due to the British victory over France and Spain in 1763 (the Seven Years' War in Europe). The victory resulted in geographical expansion in colonial America and the West Indies, and growing influence in India. The British renewed efforts to enforce the Navigation Acts, while also limiting westward expansion in America as pronounced in the Proclamation of 1763, using military establishments to prevent Indian uprisings, and extending the boundaries of Quebec. In addition to the Sugar Act and Stamp Act revenue measures, admiralty courts in Nova Scotia and elsewhere for customs enforcement replaced local colonial courts.²⁵ Such changes raised significant questions for the colonists and representatives in colonial assemblies. Should they continue to submit to the realm? Should they argue against British revenue and enforcement actions? Should they refrain from proposing legislation contrary to British interests? Should they act in the best interest of those living on American soil?

These changes resulted in a dramatic shift in the content of the discourse among the colonists, within colonial legislatures, and with the British. The colonists asserted rights with respect to governance of their internal affairs and questioned their standing with respect to the British Monarch and Parliament. As early as 1764, James Otis wrote in the pamphlet *The Rights of the British Colonies Asserted and Proved*:

Every British Subject born on the continent of America ... is by the law of God and nature, by the common law, and by act of parliament, ... entitled to all the natural, essential, inherent and inseparable rights of our fellow subjects in Great-Britain.

He lists six rights that no man or body of men can take away, with the first one asserting:

That the supreme and subordinate powers of legislation should be free and sacred in the hands where the community have once rightfully placed them.²⁶

The title itself, *The Rights of the British Colonies Asserted and Proved*, is a sharp contrast to the prevailing standard during the colonial era of submission to the realm.

The members of the New York General Assembly of the colony of New York issued a Petition to the House of Commons (October 18, 1764) that was related to Parliament's right to tax. It begins with a reference to the colony's origin and what was to be the crux of their argument against the

revenue measures: their rights. “That from the Year 1683, to this Day, there have been three Legislative Branches in this Colony; consisting of the Governor and Council appointed by the Crown, and the Representatives chosen by the People, who, besides the Power of making Laws for the Colony, have enjoyed the Right of Taxing under the Subject for the Support of the Government.”²⁷

Otis invoked the law of nature and self-government and the New York Legislators spoke to the role of parliament and the colonists’ rights. Their arguments are significant. The change in the content of their discourse begins with the appeal to their rights in response to British actions. They pursued philosophical inquiry to inform broader political developments. The present intention is not to recount the arguments in their entirety but to explain why the practices and content of the colonists’ discourse took a dramatic turn and emphasized their rights to defend their livelihood and lives. This also marks a philosophical foundation that in the next ten years would go beyond rights and extend to arguments about liberty, equality, representation, natural right, laws of nature, consent of the governed, and self-governance.

Another significant change was the scope of American colonial discourse that included all the colonies in a communal effort to address the British measures. The call to convene a gathering to address the duties and taxes on the colonies came from Massachusetts Bay colonists:

Proceedings of the House of Representatives of Massachusetts Bay, June 6, 1765. That it is highly expedient there should be a meeting as soon as may be, of the committees from the Houses of Representatives and Burgesses in the several Colonies on this Continent, to consult together on the present circumstances of the Colonies, and the difficulties to which they are, and must be reduced by the operation of the late acts of Parliament for levying duties and taxes on the Colonies, and to consider of a general and humble address to his Majesty and the Parliament to implore relief.²⁸

Communities like Little Compton, Rhode Island held town meetings to appoint commissioners to attend while other colonial assemblies gave instructions to attendees and passed resolutions addressing the British actions. South Carolina called for their resolutions to be printed and made public, proclaiming “that a just sense of liberty, and the firm sentiments of the loyalty of the representatives of the People of this Province may be known to their constituents, and transmitted to posterity.”²⁹

Representatives from nine colonies attended the meeting requested by the Massachusetts Bay colonists. Those who did not attend received copies of

the proceedings. In a letter to his brother Thomas Rodney, Caesar Rodney (Delaware representative) explained how difficult the deliberations were:

We had carefully to avoid any infringement of the prerogative of the crown and the power of Parliament—and yet in duty bound fully to assert the rights and privileges of the Colonists. However, after arguing and debating two weeks, on liberty, privileges, prerogative, &c. in an assembly of great abilities, we happily finished them and now have the Petition and Addresses before us, and expect to finish in three or four days.³⁰

On October, 19, 1765, the Congress issued a Declaration of the Rights and Grievances of the Colonists in America, which included fourteen declarations of the “essential rights and liberties of the colonists.”³¹ The participants walked a fine line between respecting the Crown and asserting their positions; they did so within a representative assembly similar to their colonial governing experiences with the British.

The Stamp Act was subsequently repealed in 1766, but that was not the end of tensions and disagreements. The adversarial relationship with the British continued, which prompted the colonies to continue to work in concert. They furthered their discourse through Committees of Correspondence.³² Beyond political bodies, there was also a wide variety of discourse that broached philosophical and political questions, which continued up to independence and after. Colonists engaged in debates, delivered speeches, gave political sermons in houses of worship, wrote letters, drafted pamphlets, and penned newspaper editorials to explain the colonists’ disagreement with the new British measures and British governance generally. “Letters from a Farmer in Pennsylvania,” for example, addressed the Townshend Acts.³³ Colonial gazettes published the Letters, which raised fundamental questions about rights, governance, and related issues. Sermons in churches expanded the conversations. Gad Hitchcock’s “An Election Sermon” (Boston, 1774), declared that “the people were the only source of civil authority on earth” and Levi Hart’s “Liberty Described and Recommended: in a Sermon Preached to the Corporation of Freemen of Farmington” (Hartford, 1775) included a summary of the basic assumptions of American political theory.³⁴ In *Considerations on the Nature and the Extent of the Legislative Authority of the British*, James Wilson asked the questions: “Will it ensure and increase the happiness of the American Colonies, that the Parliament of Great-Britain should possess a supreme irresistible uncontrolled authority over them? Is such an authority consistent with their liberty? Have they any security that it will be employed only for their good?”³⁵ During the independence debates, Thomas Paine’s 1776 pamphlet, *Common Sense*, sold more

than 500,000 copies within a few months, a testament to the widespread colonial interest.³⁶

The convening of a Continental Congress on two subsequent occasions was in response to British actions.³⁷ Delegates from all colonies except Georgia met from September 5 - October 26, 1774 in Philadelphia to discuss what the colonists called the Intolerable Acts (dubbed the Coercive Acts by the British), which punished Massachusetts for its rebellion (dumping tea in the Boston Harbor and other actions). After much debate, the Congress issued the Declaration and Resolves of the First Continental Congress to the British government and instituted a boycott.³⁸ The ensuing hostilities at Lexington and Concord and other matters led to the convening of the Second Continental Congress in May, 1775. This Congress had the shared responsibilities of the two prior colonial congresses (1765 and 1774): debating unified responses to British actions and drafting documents to present to the British Monarch and Parliament. This Congress issued the Olive Branch Petition (Petition to the King) and a Declaration Setting Forth the Causes and Necessity of Their Taking Up Arms.³⁹ It differed because singular British acts were no longer the sole focus of the delegates but rather broader government and administrative actions, including coordinating a war effort (the Continental Army was formed on June 14, 1775), enlisting allies through diplomatic efforts, issuing currency to finance the war, and establishing a postal service and other administrative duties. It was also in this Congress that Richard Henry Lee of Virginia introduced a resolution to absolve allegiance to the British Crown, form foreign alliances, and draft a plan for confederation. Committees drew up the documents and voted in July 1776. The Congress also recommended to the colonies that they establish new governments.⁴⁰

The 1776 separation from the British occurred some 150 years after settlement began in the American colonies. That crucial period saw the formation of habits of discourse within deliberative political bodies and among the people, and the change in the content of their discourse from subject to citizen; both supported self-governance in the new nation. Alexis de Tocqueville in *Democracy in America* offers further examples of the development of discourse among the people.

Schools

Over a span of nine months in the 1830's, Tocqueville traveled throughout America. His study of political and social institutions offers insights into American democratic practices, including his explanation of how citizen

participation in local governance in townships, jury service, and associations influences and shapes American behavior.⁴¹ Each draws on and develops a different type of discourse.

Townships serve as fertile seeds of free institutions whose function is two-fold. On the one hand it serves the practical function of a governing body, and on the other it serves the social function of a school. As a governing body, it is charged with meeting the daily needs of the people, such as policing, keeping records, directing public instruction, maintaining highways, and the like, all of which require collaboration. It is a school in the sense that it provides an opportunity for citizens to involve themselves with the governing of their own affairs and those closest to them. Among the many benefits derived from township is putting freedom within reach of the people and habituating them to make use of it. This institution is similar to the colonial assemblies previously discussed, and like them relies upon deliberation and debate. The differences are the scope of authority and the tasks.

Juries are comprised of citizens who are temporarily charged with judging their peers. After hearing the arguments of the case, the jurors deliberate among themselves and render a verdict. The benefits that citizens draw from this activity include learning to take responsibility for their actions, having had the experience of judging. The honor of being called to perform such a task instills a sense of duty toward society. It combats selfishness because jurors occupy themselves with something other than their own affairs. Tocqueville also explains that jury service forms the judgment of citizens and augments the natural enlightenment of people.

Tocqueville distinguishes permanent associations created by law—townships, cities, and counties—from political and civil associations that arise out of individual effort. Americans form political associations because of a shared doctrine or intellectual bond, but they form civil associations for many reasons and causes. Associations are especially important in countries with democratic institutions because the independence of citizens tends to disperse rather than unify the people and because of their civilizing influence. Tocqueville makes two compelling statements on these points. The first is, “A people among whom particular persons lost the power of doing great things in isolation, without acquiring the ability to produce them in common, would soon return to barbarism.” The second is, “Sentiments and ideas renew themselves, the heart is enlarged, and the human mind is developed only by the reciprocal action of men upon one another.”⁴² Discourse is a means to accomplish the reciprocal action through debate and deliberation; these exchanges support the common effort. It must be noted, however,

that while uniting for a common purpose may increase the chances of success, each participant does not lose his independence: “as in society, all men in it march at the same time toward the same goal; but each one is not required to march to it exactly on the same path.”⁴³ Those who join in conversation where there is a freedom to disagree and a respect to listen to others with different ideas or disagreements are hallmarks of fellowship, a necessary component of a thriving civil society.

These three examples have discourse between the participants at the center of each activity. The collaboration to govern local affairs, to judge, and to discern a means to achieve goals relies upon deliberation and carrying out the activity that is supported by discussion.

A Plea for Discourse

The discussion thus far has drawn examples from the colonial and early American periods to discover the origins of the practices and content that lead to America’s governing discourse. A thorough overview requires that we consider episodes from American history when some have been shut out of discourse, whether it was because they were not free to participate or because some deemed them not worthy to be heard. Discourse is between two or more people, but what is the recourse when there are those who refuse to listen or acknowledge others? We can imagine discourse as being something other than spoken words. Song, for example, is a means to communicate that is not typically understood as discourse. There are also printed words and actions, both of which aim to evoke a response and initiate discourse if successful.

W.E.B. du Bois titles the last chapter of his book, *The Souls of Black Folk*, “The Sorrow Songs.”⁴⁴ He begins with a description of those who sang. “They that walked in darkness sang songs in the olden days—Sorrow Songs—for they were weary at heart. And so before each thought that I have written in this book I have set a phrase, a haunting echo of these weird old songs in which the soul of the black slave spoke to men.” He refers to the Negro folk-song as “the rhythmic cry of the slave,” “the most beautiful expression of human experience born this side the seas,” and “the articulate message of the slave to the world.” The message, he explains, is “naturally veiled and half articulate.” So long as the slave was shut out of political discourse, he turned his eyes elsewhere. “Through all the sorrow of the Sorrow Songs there breathes a hope—a faith in the ultimate justice of things.” His pleas over generations were to those “headstrong, careless people to despise not Justice, Mercy, and Truth.”

Two other men who made similar pleas approached it in different ways. Frederick Douglass, a slave who gained freedom, became a public speaker and the newspaper editor of *The North Star* and *The New National Era*. A century later, Martin Luther King, Jr., engaged in nonviolent protests, which included marches and sitting silently at lunch counters. These men, on behalf of those in bondage or suffering injustices, brought attention to their plight through written words and silent actions, with the goal of provoking discourse.

The three men shared the similar goal of ending the injustice suffered by many. One recalled and preserved sorrow songs, another publicized the written word that served as a voice for those who could not speak or were not heard when they did speak, and the third organized silent protest when their negotiations failed. These efforts included the goal of initiating discourse between the wronged men and women who deserved to be heard and those who refused to listen. Listening is as much a part of discourse as is speaking.⁴⁵

Conclusion

John Adams explains in his 1818 letter to Hezekiah Niles Quincy that “The Revolution was in the Minds and Hearts of the People” and “Thirteen Clocks were made to Strike together.”⁴⁶ The differences were many among the colonists who lived in urban or rural settings, worked in agrarian or mercantile professions, had different ethnic, religious, and educational backgrounds, and more. The thirteen clocks struck together only after the people reached an understanding. Their habits and practices of discourse supported this effort. Adams captures this in a letter to his wife Abigail when he describes the period leading up to declaring independence:

Time has been given for the whole People, maturely to consider the great Question of Independence and to ripen their judgments, dissipate their Fears, and allure their Hopes, by discussing it in News Papers and Pamphletts, by debating it, in Assemblies, Conventions, Committees of Safety and Inspection, in Town and County Meetings, as well as in private Conversations, so that the whole People in every Colony of the 13, have now adopted it, as their own Act.⁴⁷

Coolidge also speaks to the effort: “The American Revolution represented the informed and mature convictions of a great mass of independent, liberty-loving, God-fearing people who knew their rights, and possessed the courage to dare to maintain them.”⁴⁸ Their convictions did not happen in an instant but formed gradually throughout the colonial era as evidenced by the

change in the content of their discourse and actions: from the original colonial stance of submitting to the British, to asserting their rights as British Americans, to invoking natural rights, and finally referencing “the laws of nature⁴⁹ and nature’s God” in the document that declared their independence. The arguments put forth in the Continental Congress, the colonial assemblies, in public venues, houses of worship, and publications reached the level of philosophical inquiries to address political differences with the British.

The claim made in the Introduction that the Declaration of Independence, the Constitution, and the Bill of Rights are the foundation of America’s governing discourse begins the broader inquiry that will be addressed in a forthcoming book. The period covered in this essay ranges from the early colonial settlements to declaring independence and explains how discourse came to play an integral role in America’s government and society. Discourse is also a necessary foundation of republican government. There is no discourse or debate in other forms of government, such as tyranny, and only a few dominate the exchanges in monarchy, aristocracy, and oligarchy. A republican government with democratic foundations has a greater need for such practices because there must be discourse between and among representatives and citizens, and fair and reasoned debate when there are differences. Inflammatory rhetoric and provocative actions can incite violence. There were protests, boycotts, and violence against British policies, agents, and goods, but the efforts by the colonists to find a resolution of their differences through deliberation, discourse, and debate did not cease until they determined that independence was the best remaining response.⁵⁰ The aim of discourse is to encourage deliberation, which contributes to preventing violence by stemming the passions, and promotes well-informed outcomes and resolutions.

The danger that America now faces when some are intent on quashing discourse is the movement from politics to sheer power. The latter has no place for deliberation but relies on force. The founders foresaw this in *Federalist* No. 1: “whether societies of men are really capable of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.”⁵¹ Force and violence do away with all forms of discourse and deliberation, citizens ignore the rule of law, and the rule of mobs takes hold. Another danger that modern America faces with respect to the loss of the habit of dialogue and debate is in the study of American Political Thought. American foundational principles are currently being called into question and criticized to the point that it can no longer be assumed that there will be a standard

curriculum or a common purpose among citizens. The criticisms can be likened to assaults: the rejection of the intellectual foundations of the study of politics; silencing or hindering speech; and sowing seeds of confusion around America's point of origin and the founding that inform America's foundation.

A response to these threats is that American citizens, of all generations and backgrounds, must be conversant with the tradition and the practices of their origins if they are going to continue to be a free people.⁵² The tradition of liberal education assists in this effort to maintain those freedoms that our predecessors from the founding era pledged their lives, their fortunes, and their sacred honor to secure. The stakes are high because the country has lost much by the decline of the educational system and in the freedom to have fair and open debate. Recovering the ability to deliberate amongst ourselves, and particularly an understanding of America's governing discourse, will reverse the decline and contribute to perpetuating America's constitutional republic. How citizens and political leaders respond determines whether the nation flourishes or declines, lives or dies.

NOTES

¹ The idea for this essay originated from lectures on the Declaration of Independence, the Constitution, and the Bill of Rights, given at St. John's College in the Santa Fe Graduate Institute lecture series. This essay is a modified version of the first chapter of my forthcoming book.

² Robert M. Hutchins, ed., *The Great Books of the Western World*, vol. 1, *The Great Conversation: The Substance of a Liberal Education* (Chicago: Encyclopaedia Britannica, Inc., 1952), 1.

³ John Adams, "III. Thoughts on Government, April 1776," *Founders Online*, National Archives, <https://founders.archives.gov/documents/Adams/06-04-02-0026-0004> (accessed October 20, 2025).

⁴ Thucydides, *The Landmark Thucydides: A Comprehensive Guide to the Peloponnesian War*, ed. Robert B. Strassler, trans. Richard Crawley (New York: Touchstone 1996), 2.40.

⁵ Calvin Coolidge, "The Inspiration of the Declaration," A speech celebrating the one hundred and fiftieth anniversary of the signing of the Declaration of Independence, Philadelphia, Pennsylvania, July 5, 1926, Calvin Coolidge Presidential Foundation, <https://coolidgefoundation.org/resources/inspiration-of-the-declaration-of-independence/> (accessed October 20, 2025).

⁶ The Massachusetts Bay Company is an early example of an English chartered commercial corporation, having a charter empowering the company to trade and set up

a colony. In Virginia, corporate governance served as colonial governance. The Treasurer was the head of the corporation and there were two councils to govern: one resident in England and the other in the colony. There were also proprietary charters issued to individuals (e. g. Lord Baltimore, William Penn, and the Duke of York) who assumed governing powers. The King controlled the Royal colonies, granting authority to colonial commissions and colonial Assemblies. *Colonial British America, Essays in the New History of the Early Modern Era*, ed. Jack P. Greene and J. R. Pole (Baltimore: Johns Hopkins University Press, 1984), chapter 14, “Political Development.”

⁷ Examples include the Navigation Acts (1651, 1660, 1663) which regulated transport, English shipbuilding, and shipment of goods to and from the colonies; the Molasses Act (1733) which restricted trade to the British West Indies; the Sugar Act (1764) which imposed duties that would be ruinous to the colonists; and others. Additional Acts that exacerbated tensions included the Stamp, Currency, and Quartering Acts (1765), the Declaratory Act (1766), the Townshend Revenue Act (1767), and the Tea Act (1773).

⁸ *Ordinances for Virginia; July 24-August 3, 1621*, “An Ordinance and Constitution of the Treasurer, Council, and Company in England, for a Council of State and General Assembly. Dated July 24, 1621, #V,” *The Avalon Project: Documents in Law, History, and Diplomacy*, https://avalon.law.yale.edu/17th_century/va04.asp (accessed October 20, 2025).

⁹ *Journal and votes of the House of Representatives of the province of Nova Cesarea or New Jersey in their first session of assembly began at Perth Amboy, the 10th day of November, 1703* (Jersey City: J.H. Lyon, 1872), 5, <https://archive.org/details/journalvotesofho00newj/page/n5/mode/2up> (accessed October 20, 2025). The reference to his Excellency may be to Edward Hyde Cornbury, Viscount, who was colonial governor of New York and New Jersey (1702-08).

¹⁰ “The representatives in the Assembly were called ‘burgesses’ at the start, not because they were representatives, but because they were citizens and voters in these ‘boroughs,’ [towns] but very soon the idea of representation became attached to the word ‘burgess,’ and then, the boroughs of the company having gone out of existence, the word came to mean, so far as *Virginia* was concerned, a representative in the elective branch of the General Assembly and nothing else. Its use in the sense of a voter did not persist. But as meaning a representative it continued in use till the Revolutionary War, though there was only one town in the Colony. The reason for this was, of course, that the term was used in the official documents of the later period and that these followed the usage set by the Company.” *Journals of the House of Burgesses of Virginia, 1619-1658/59*, ed. H. R. McIlwaine v (Richmond, Virginia: Virginia State Library, 1915), “Preface, The General Assembly of 1619,” 35 (xxvii), <https://archive.org/details/journalsofhousb1619virg/page/n7/mode/2up> (accessed October 28, 2025).

¹¹ “Constitution for the Council and Assembly in Virginia,” July 24, 1621, in *Colonial Origins of the American Constitution: A Documentary History*, ed. Donald S. Lutz (Indianapolis: Liberty Fund, 1998), 337.

¹² *The Statutes at Large; Being a Collection of all the Laws of Virginia, from the First Session of the Legislature, in the Year 1619*, ed. William Waller Hening (New

York: R & W & G Bartow, 1823), I.412, <https://archive.org/details/statutesatlargeb01virg/page/n5/mode/2up> (accessed October 28, 2025).

¹³ “The Charter of Maryland: 1632,” *The Avalon Project: Documents in Law, History, and Diplomacy*, https://avalon.law.yale.edu/17th_century/ma01.asp (accessed October 20, 2025); The Charter for the Province of Pennsylvania-1681, https://avalon.law.yale.edu/17th_century/pa01.asp (accessed October 20, 2025).

¹⁴ Peverill Squire, *The Evolution of American Legislatures: Colonies, Territories, and States, 1619-2009* (Ann Arbor: University of Michigan Press, 2012), 52. The original rules are in the *Journal of the Commons House of Assembly of South Carolina, For the Session Beginning September 20, 1692, and Ending October 15, 1692*, ed. A. S. Salley, Jr. (Columbia, S.C., The State Company), 5, https://www.carolana.com/Carolina/Commons_House/Journal_of_the_Commons_House_of_Assembly_of_South_Carolina_1692.pdf (accessed October 20, 2025).

¹⁵ Squire, *Evolution of American Legislatures*, 77.

¹⁶ Peverill Squire, “The Beginnings of Representation in America: The Relationship between Representatives and Constituents in the Colonial Era” (paper, “Political Representation: Fifty Years After Miller & Stokes” conference, Center for the Study of Democratic Institutions, Vanderbilt University, Nashville, Tennessee, March 1-2, 2013), 9, https://www.vanderbilt.edu/csdi/miller-stokes/01_MillerStokes_Squire.pdf (accessed October 28, 2025). The quoted text is in *Records of the Colony of Rhode Island and Providence Plantations in New England, vol 1, 1636-1663*, ed. John Russell Bartlett, <https://archive.org/details/recordsofcolonyo01rhod/page/n1/mode/2up>.

¹⁷ The names of the bodies with colonial representatives varied from colony to colony. The generic name of assembly is used unless quoting from the original.

¹⁸ Squire, *Evolution of American Legislatures*, 2.

¹⁹ The journal entry dated Monday, the 6th of May, 16 Geo. III. 1776 reads “Several Members met, but did neither proceed to Business, nor adjourn, as a House of Burgess. FINIS.” *Journals of the House of Burgesses of Virginia 1773-1776*, ed. John Pendleton Kennedy (Richmond, Virginia, 1905), 312 (p. 283), <https://archive.org/details/journalsofhouse1773c1776virg/page/n7/mode/2up> (accessed October 28, 2025). Also beginning on May 6, 1776, was the convention to adopt a new Virginia Constitution. “VII. The Constitution as Adopted by the Convention, [29 June 1776],” *Founders Online*, National Archives, <https://founders.archives.gov/documents/Jefferson/01-01-02-0161-0008> (accessed November 26, 2025). The former colonies established new political bodies to reflect their status as an independent country, including Virginia’s executive, judiciary, and the legislative (called the General Assembly) departments.

²⁰ Squire, *Evolution of American Legislatures*, 35-36.

²¹ While much of the documentation is lost, a volume of the Journals of the Provincial Congress of Massachusetts and Related Documents and Bodies has a varied collection. The volume includes the Proclamation of General Gage, prohibiting all persons from complying, in any degree, with the resolves or recommendations of the Provincial Congress, dated November 10, 1774. *Journals of the Provincial Congress of Massachusetts in 1774 and 1775, and of the Committee of safety, with an appendix containing the proceedings of the county convention, narratives of the events of the nineteenth of April, 1775, papers relating to Ticonderoga and Crown*

Point, and other documents, illustrative of the early history of the American revolution, ed. William Lincoln (Boston, Dutton and Wentworth, Printers to the state, 1838), <https://archive.org/details/journalsofeachprma00mass/page/n7/mode/2up> (accessed October 20, 2025).

²² See note 37.

²³ *Journals and Votes of the House of Representatives of the Province of Nova Cesarea, or New Jersey, In their First Sessions of Assembly, Began at Perth Amboy, The 10th Day of November 1703* (Jersey City, John H. Lyon Printer, 1872), 4, 6, <https://archive.org/details/journalvotesofho00newj/page/n5/mode/2up> (accessed October 20, 2025).

²⁴ Joseph Story, *Commentaries on the Constitution of the United States* § 857 (1833). The right dates to the English Bill of Rights of 1689: “That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament....” *The Avalon Project: Documents in Law, History, and Diplomacy*, https://avalon.law.yale.edu/17th_century/england.asp (accessed October 20, 2025).

²⁵ “The Royal Proclamation - October 7, 1763 BY THE KING. A PROCLAMATION GEORGE R.,” *The Avalon Project: Documents in Law, History, and Diplomacy*, https://avalon.law.yale.edu/18th_century/proc1763.asp (accessed October 20, 2025). “Great Britain: Parliament, The Sugar Act, 1764,” https://avalon.law.yale.edu/18th_century/sugar_act_1764.asp (accessed October 20, 2025). “Great Britain: Parliament, The Stamp Act, March 22, 1765,” https://avalon.law.yale.edu/18th_century/stamp_act_1765.asp (accessed October 20, 2025). “Great Britain: Parliament, The Quebec Act, October 7, 1774,” https://avalon.law.yale.edu/18th_century/quebec_act_1774.asp (accessed October 20, 2025).

²⁶ Jack P. Greene, ed., *Colonies to Nation 1763 – 1789: A Documentary History of the American Revolution* (New York: W. W. Norton, 1975), 28–29.

²⁷ Greene, *Colonies to Nation*, 33–34.

²⁸ *First American congress*, composed by Peter Force (Washington, 1832), Pdf. Massachusetts Circular, recommending a Congress of the Colonies, image 35 (p. 41 in the print version), <https://www.loc.gov/item/08027824/> (accessed October 20, 2025).

²⁹ *First American congress*, image 38, 40–46 (pp. 44, 46–52 in the print version), <https://www.loc.gov/item/08027824/> (accessed October 20, 2025).

³⁰ Caesar Rodney, Letter to Thomas Rodney (October 20, 1765), in *First American congress*, image 52 (p. 58 in the print version), <https://www.loc.gov/item/08027824/> (accessed October 20, 2025).

³¹ *First American congress*, image 52 (p. 58 in the print version), <https://www.loc.gov/item/08027824/> (accessed October 20, 2025).

³² American colonial legislatures, local governments, and colonists established committees as early as 1764 to address specific British Acts, but several eventually became permanent and supported intercolonial communication efforts through 1776. “American History Central: The Encyclopedia of American History, Committees of Correspondence 1764–1774,” <https://www.americanhistorycentral.com/entries/committees-of-correspondence/> (accessed October 20, 2025).

³³ John Dickenson, *Letters from a Farmer in Pennsylvania, to the Inhabitants of the British Colonies* (New York: The Outlook Company, 1903), <https://www.gutenberg.org/files/47111/47111-h/47111-h.htm> (accessed October 20, 2025).

³⁴ Charles S. Hyneman and Donald S. Lutz, eds., *American Political Writing during the Founding Era 1760-1805* (Indianapolis: Liberty Press, 1983), 1:281-304, 1:305-317.

³⁵ Written in 1768, *Considerations* was published in 1774 by William and Thomas Bradford in Philadelphia. James Wilson, "Considerations on the Nature and the Extent of the Legislative Authority of the British Parliament," in *Collected Works of James Wilson*, vol. 1, ed. Kermit L. Hall and Mark David Hall (Indianapolis: Liberty Fund, 2007), 5.

³⁶ Philip S. Foner, "Thomas Paine." *Encyclopedia Britannica*, <https://www.britannica.com/biography/Thomas-Paine> (accessed October 20, 2025).

³⁷ The Journals of the Continental Congress (1774-1789) contain the daily records of proceedings from the convening of the First Continental Congress through the ratification of the Constitution. This is an example of the colonists continuing the practices of legislative bodies learned from the British while under their governance. It is significant that the colonists, while still under the authority of the British King and Parliament, convened the First Continental Congress one year and ten months before declaring independence from the British. Since May 1775, thirteen months before declaring independence, there has been a continuous representative congressional body through the present US Congress. *Journals of the Continental Congress (1774-1789)*, Library of Congress, Washington DC, <https://www.loc.gov/collections/century-of-lawmaking/articles-and-essays/continental-congress/journals-of-the-continental-congress/> (accessed October 20, 2025).

³⁸ *Declaration and Resolves of the First Continental Congress, October 14, 1774, The Avalon Project: Documents in Law, History, and Diplomacy*, https://avalon.law.yale.edu/18th_century/resolves.asp (accessed November 26, 2025).

³⁹ *Journals of the Continental Congress - Petition to the King; July 8, 1775, The Avalon Project: Documents in Law, History, and Diplomacy*, https://avalon.law.yale.edu/18th_century/contcong_07-08-75.asp (accessed November 28, 2025). "A Declaration by the Representatives of the United Colonies of North-America, Now Met in Congress at Philadelphia, Setting Forth the Causes and Necessity of Their Taking Up Arms," *The Avalon Project: Documents in Law, History, and Diplomacy*, https://avalon.law.yale.edu/18th_century/arms.asp#1 (accessed November 28, 2025).

⁴⁰ "Lee Resolution (1776)," National Archives, Milestone Documents, <https://www.archives.gov/milestone-documents/lee-resolution> (accessed December 1, 2025). Library of Congress, "Documents from the Continental Congress and the Constitutional Convention, 1774 to 1789," "1776 Timeline," <https://www.loc.gov/collections/continental-congress-and-constitutional-convention-from-1774-to-1789/articles-and-essays/timeline/1776/> (accessed December 1, 2025).

⁴¹ Alexis de Tocqueville, *Democracy in America*, trans. Harvey C. Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2000), Township, I.1.5. Juries, I.2.8. Associations I.2.4, II.2.5, II.2.7.

⁴² Tocqueville, II.2.5.

⁴³ Tocqueville, I.2.4.

⁴⁴ All quotations are from chapter 14, “The Sorrow Songs.” W.E.B. du Bois, *The Souls of Black Folk* (New York: Dover Publications, 1994).

⁴⁵ At the beginning of the *Republic*, Polemarchus asks Socrates, “Could you persuade men who do not listen?” Glaucon replies no. Plato, *Republic*, trans. G. M. A. Grube (Indianapolis: Hackett Publishing, 1974), 327 c.

⁴⁶ “John Adams to Hezekiah Niles, 13 February 1818,” *Founders Online*, National Archives, <https://founders.archives.gov/documents/Adams/99-02-02-6854> (accessed October 20, 2025). Also in this letter, Adams refers to the previously mentioned Navigation Acts as Acts of Trade. He dates what he calls the “Awakening and a Revival of American Principles and Feelings,” to 1760 and 1761 and “which went on increasing till in 1775 it burst out in open Violence, Hostility and Fury.”

⁴⁷ “John Adams to Abigail Adams, 3 July 1776,” *Founders Online*, National Archives, <https://founders.archives.gov/documents/Adams/04-02-02-0016> (accessed October 20, 2025).

⁴⁸ Coolidge, 1926 speech.

⁴⁹ Reference to the laws of nature is in the Declaration and Resolves of the First Continental Congress, October 14, 1774. “That the inhabitants of the English colonies in North-America, by the immutable laws of nature, the principles of the English constitution, and the several charters or compacts, have the following RIGHTS.” Ten rights are listed as well as acts of Parliament deemed infringements and violations of the rights of the colonists. *The Avalon Project: Documents in Law, History, and Diplomacy*, https://avalon.law.yale.edu/18th_century/resolves.asp (accessed December 3, 2025).

⁵⁰ The best example is the Second Continental Congress adopting the “Olive Branch Petition” on July 5, 1775, to prevent war with the British. The Congress also adopted the Declaration of the Causes and Necessity of Taking Up Arms on July 6, 1775 to inform the British of their resolve and the justice of their cause. See endnote 38.

⁵¹ Alexander Hamilton, “Federalist No. 1,” in *The Federalist Papers*, ed. Clinton Rossiter (New York, Signet, 1961), 33.

⁵² The idea of being conversant with a tradition comes from the following. “A human, a fully formed man or woman needs to be conversant in this canon to vindicate and fulfill and express their deep humanity and that is how it is done. And I think at that level Talmud Torah is not so different. Of course, the vision of humanity is a little different. To become a fully formed Jew, *one needs not to just know the rules but one needs to be able to converse with the tradition*, and that is the core of this commandment of Talmud Torah. I believe that strongly because Talmud Torah has never been limited to merely knowing what the rules of practice are.” (Emphasis added). The Tikvah Podcast, episode 364, June 14, 2024, “Chaim Saiman on the Roots and Basis of Jewish Law,” quotation @ 36 minutes, <https://ideas.tikvah.org/podcasts/the-tikvah-podcast/episode/chaim-saiman-on-the-roots-and-basis-of-jewish-law-rebroadcast> (accessed October 28, 2025).

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