

# After Counting the Ballots

*John Q. Barrett\**

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On March 4, 1939, President Franklin D. Roosevelt marked the sixth anniversary of his first inauguration in the manner that had become his tradition. With family, Cabinet officers, and other friends and guests, he attended a morning church service in Washington.

Following the church event, President Roosevelt and his guests attended a special joint session of Congress to commemorate the 150<sup>th</sup> anniversary of Congress's first session. Those present included the President and his Cabinet officers, the Members of Congress and the Justices of the Supreme Court (and perhaps, among the sub-Cabinet, Solicitor General Robert H. Jackson). The Speaker of the House, Representative William B. Bankhead (D-AL), spoke first. He was followed by the President *pro tempore* of the Senate, Senator Key Pittman (D-NV); by the Senate Majority Leader, Senator Alben W. Barkley (D-KY); and by the Chief Justice of the United States, Charles Evans Hughes.

President Roosevelt spoke last. His speech, reprinted in full below, touched on many themes of democratic, constitutional government. One hopeful passage that seems especially apt after a presidential election is the following:

*With the direct control of the free choosing of public servants by a free electorate, our Constitution has proved that this type of government cannot long remain in the hands of those who seek personal aggrandizement for selfish ends, whether they act as individuals, as classes or as groups.*

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*It is therefore in the spirit of our system that our elections are positive in their mandate, rather than passive in their acquiescence. Many other nations envy us the enthusiasm, the attacks, the wild over-statements, the falsehood intermingled gaily with the truth, that marks our general elections. Yes, they envy us because all of these things are promptly followed by acquiescence in the result and a return to calmer waters as soon as the ballots are counted.*

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President Franklin D. Roosevelt  
Address to Congress on the Occasion of the  
One Hundred and Fiftieth Anniversary of the Congress  
March 4, 1939

Mr. Vice President, Mr. Speaker, Gentlemen of the Supreme Court, Members of the Senate and the House of Representatives, Gentlemen of the Diplomatic Corps:

We near the end of a three-year commemoration of the founding of the government of the United States. It has been aptly suggested that its successful organizing should rank as the eighth wonder of the world—for surely the evolution of permanent substance out of nebulous chaos justifies us in the use of superlatives.

Thus, we may increase our oratory and please our vanity by picturing the period of the War of the Revolution as crowded with a unanimous population of heroes dramatized by the admitted existence of a handful of traitors to fill the necessary role of villain. Nevertheless, we are aware today that a more serious reading of history depicts a far less pleasing scene.

It should not detract from our satisfaction in the result to acknowledge that a very large number of inhabitants of the 13 revolting colonies were opposed to rebellion and opposed to independence; that there were constant friction between the Continental Congress and the

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Commander-in-Chief and his Generals in the field; that inefficiency, regardless of the cause of it, was the rule rather than the exception in the long drawn out war; and finally that there is grave doubt as to whether independence would have been won at all if Great Britain herself had not been confronted with wars in Europe which diverted her attention to the maintenance of her own existence in the nearer arena.

We can at least give thanks that in the first chapter all was well that ended well; and we can at least give thanks to those outstanding figures who strove against great odds for the maintenance of the national ideal which their vision and courage had created.

The opening of the new chapter in 1783 discloses very definitely that assurance of continued independence could be guaranteed by none. Dissension and discord were so widely distributed among the thirteen new states that it was impossible to set up a union more strong or permanent than that loose-end, shaky debating society provided for under the Articles of Confederation. That we survived for six years is more a tribute to the ability of the Confederation Congress gracefully to do nothing and to the exhaustion that followed the end of the war, rather than to any outstanding statesmanship or even leadership. So, again, we can properly say of the period of confederation, that all was well that ended well.

Those years have rightly been called “the critical period of American history.” But for crisis—in this case a crisis of peace—there would have been no Union. You the members of the Senate and the House; you the Chief Justice and Associate Justices; and I, the President of the United States, would not be here on this Fourth of March, a century and a half later.

It is well to remember that from 1781 to 1789 the thirteen original States existed as a nation by the single thread of Congressional government, and without an executive or a judicial branch. This annual assembly of representatives, moreover, was compelled to act not by a majority but by States, and in the more important functions by the requirement that nine States must consent to the action.

In actual authority the Congresses of the Confederation were principally limited to the fields of external relations and the national defense. The fatal defect was of course the lack of power to raise revenue for the maintenance of the system; and our ancestors may be called, at the

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least, optimistic if they believed that thirteen sovereign republics would promptly pay over to the Confederation, voluntarily, even the small sums which were assessed against them for the annual maintenance of the Congress and its functions.

Furthermore, the effect of the existing methods of transportation and communication retarded the development of a truly national government far more greatly than we realize today—and that was true throughout the first half century of our union. You have heard the phrase the “horse and buggy age.” We use it not in derogation of the men who had to spend weeks on the rough highways before they could establish a quorum of the Congress, not in implication of inferiority on the part of those who perforce could not visit their neighbors in other States and visualize at first hand the problems of the whole of an infant nation.

We use it rather to explain the tedious delays and the local antagonisms and jealousies which beset our early paths. We use it perhaps to remind our citizens of today that the automobile, the railroad, the airplane, the electrical impulse over the wire and through the ether leave to no citizen of the United States an excuse for sectionalism, for delay in the execution of the public business or for a failure to maintain a full understanding of the acceleration of the processes of civilization.

Thus the crisis which faced the new nation through its lack of national powers was recognized as early as 1783, but the very slowness of contacts prevented a sufficient general perception of the danger until 1787 when the Congress of the Confederation issued a call for the holding of a Constitutional Convention in May.

We are familiar with the immortal document which issued from that convention; of the ratification of it by sufficient States to give it effect; of the action of the Confederation Congress which terminated its own existence in calling on the first Federal Congress to assemble on March 4<sup>th</sup>, 1789.

We know of the month’s delay before a quorum could be attained; of the counting of the ballots unanimously cast for General Washington; of his notification; of his triumphal journey from Mount Vernon to New York; and of his inauguration as first President on April 30<sup>th</sup>.

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So ended the crisis. So, from a society of thirteen republics was born a nation with the attributes of nationality and the framework of permanence.

I believe that it has been held by the Supreme Court that the authority of the Articles of Confederation ended on March 3, 1789. Therefore, the Constitution went into effect the next day.

That Constitution was based on the theory of representative government, two of the three branches of its government being chosen by the people, directly in the case of the House of Representatives, by elected Legislatures in the case of the Senate, and by elected electors in the case of the President and the Vice President. It is true that in many States the franchise was greatly limited, yet the cardinal principle of free choice by the body politic prevailed. I emphasize the words “free choice” because until a very few years ago this fundamental, or perhaps, I should call it this ideology, of democracy was in the ascendant throughout the world, and nation after nation was broadening its practice of what the American Constitution had established here so firmly and so well.

This safety of the system of representative democracy is in the last analysis based on two essentials: first, that at frequent periods the voters must choose a new Congress and a new President; and second, that this choice must be made freely, that is to say, without any undue force against or influence over the voter in the expression of his personal and sincere opinion.

That, after all, is the greatest difference between what we know as democracy, and those other forms of government which, though they seem new to us, are essentially old—for they revert to the systems of concentrated, self-perpetuating power against which the representatives of the democratic system were successfully striving many centuries ago.

Today, with many other democracies, the United States will give no encouragement to the belief that our processes are outworn, or that we will approvingly watch the return of forms of government which for two thousand years have proved their tyranny and their instability alike.

With the direct control of the free choosing of public servants by a free electorate, our Constitution has proved that this type of government

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cannot long remain in the hands of those who seek personal aggrandizement for selfish ends, whether they act as individuals, as classes or as groups.

It is therefore in the spirit of our system that our elections are positive in their mandate, rather than passive in their acquiescence. Many other nations envy us the enthusiasm, the attacks, the wild over-statements, the falsehood intermingled gaily with the truth, that marks our general elections. Yes, they envy us because all of these things are promptly followed by acquiescence in the result and a return to calmer waters as soon as the ballots are counted.

We celebrate the completion of the building of the constitutional house. But one essential was lacking—for the house had to be made habitable. And even in the period of the building, those who put stone upon stone, those who voted to accept it from the hands of the builders knew that life within the house needed other things for its inhabitants. Without those things, indeed, they could never be secure in their tenure, happy in their toil or in their rest.

And so there came about that tacit understanding that to the Constitution would be added a Bill of Rights. Well and truly did the first Congress of the United States fulfill that first unwritten pledge; and the personal guarantees thus given to our individual citizens have established, we trust for all time, what has become as ingrained in our American natures as the free elective choice of our representatives itself.

In that Bill of Rights lies another vast chasm between our representative democracy and those reversions to personal rule which have characterized these recent years.

Jury trial: do the people of our own land ever stop to compare that blessed right of ours with some processes of trial and punishment which of late have reincarnated the “justice” of the dark ages?

The taking of private property without due compensation: would we willingly abandon our security against that in the face of the events of recent years?

The right to be safe against unwarrantable searches and seizures: read your newspapers and rejoice that our firesides and our households are still safe.

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Freedom to assemble and petition the Congress for a redress of grievances: the mail and telegraph bring daily proof to every Senator and every Representative that that right is at the height of an unrestrained popularity.

Freedom of speech: yes, that, too, is unchecked for never has there been so much of it on every side of every subject. It is indeed a freedom which, because of the mildness of our laws of libel and slander, goes unchecked except by the good sense of the American people. Any person is constitutionally entitled to criticize and call to account the highest and the lowest in the land—save only in one exception. For be it noted that the Constitution itself protects Senators and Representatives and provides that “for any Speech or Debate in either House, they shall not be questioned in any other Place.”<sup>[1]</sup> And that immunity is most carefully not extended to either the Chief Justice or the President.

Freedom of the press: I take it that no sensible man or woman believes that it has been curtailed or threatened or that it should be. The influence of the printed word will always depend on its veracity; and the nation can safely rely on the wise discrimination of a reading public which with the increase in the general education is able to sort truth from fiction. Representative democracy will never tolerate suppression of true news at the behest of government.

Freedom of religion: that essential of the rights of mankind everywhere goes back also to the origins of representative government. Where democracy is snuffed out, where it is curtailed, there, too, the right to worship God in one’s own way is circumscribed or abrogated. Shall we by our passiveness, by our silence, by assuming the attitude of the Levite who pulled his skirts together and passed by on the other side, lend encouragement to those who today persecute religion or deny it?

The answer to that is “no,” just as in the days of the first Congress of the United States it was “no.”

Not for freedom of religion alone does this Nation contend by every peaceful means. We believe in the other freedoms of the Bill of Rights, the other freedoms that are inherent in the right of free choice by free men and

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<sup>1</sup> U.S. CONST., Art. I, sec. 6, cl. 1.

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women. That means democracy to us under the Constitution, not democracy by direct action of mob; but democracy exercised by representatives chosen by people themselves.

Here, in this great hall, are assembled the present members of the government of the United States of America—the Congress, the Supreme Court and the Executive. Our fathers rightly believed that this government which they set up would seek to act as a whole for the good governing of the nation. It is in the same spirit that we are met here, today, 150 years later, to carry on their task. May God continue to guide our steps.[<sup>2</sup>]

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<sup>2</sup> President Franklin D. Roosevelt, *Address on the Occasion of the One Hundred and Fiftieth Anniversary of the Congress, March 4, 1939*, in 8 THE PUBLIC PAPERS & ADDRESSES OF FRANKLIN D. ROOSEVELT 147-53 (Samuel I. Rosenman, ed., 1941).