



THE GATHERING STORM

THOMAS LETHER

“All men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life Liberty and the pursuit of Happiness”

The United States of America has existed as an independent, sovereign Nation since 1781. While our Declaration of Independence was issued in 1776, it took a few years to persuade the British Empire to let us go. Although this may seem like a distant past, we, as Americans, have only existed for the past 240 years. In comparison to other empires and sovereign nations, this is a relatively short span of time. However, Americans, more so than many others, tend to overlook or fail to appreciate their own history. Furthermore, many non-Americans are not well-acquainted with what is arguably the most pivotal event in the history of the United States over the past 240 years: the American Civil War.

Today, I aim to explore the Civil War in relation to the structure of the American Government, examine the lasting impact the Civil War has had on America, delve into the ways it continues to influence us today, and consider the future of the ongoing debate over states' rights.

By the conclusion of today's session, you will possess a deeper understanding of U.S. history and government than 90% of the American population, even if you grasp only a small portion of this discussion.

The American Civil War, which spanned from April 1861 to April 1865, stands as a crucial period in our Nation's history. “Battle Cry of Freedom” by James McPherson is lauded as one of the most insightful books ever penned on the subject. This work delves deeply into the internal debates that engulfed the United States in the lead-up to the Civil War, primarily focusing on the contentious issue of slavery. However, beneath the surface, the true crux of the matter was a profound disagreement among various states regarding the balance between states' rights and Federal authority. This debate also hinged on differing interpretations of the U.S. Constitution—

whether it should be strictly adhered to or regarded more as a flexible guideline. This disagreement persists to this day, continuing to be a central force in American political discourse.

To fully grasp this complex issue, it is imperative to have a clear understanding of the structure of the United States Government and its intricate relationship with the U.S. Judiciary. For the purposes of this discussion, I will provide a high-level overview of how our government operates—or, in some cases, fails to operate.

Prior to the Civil War, the most monumental event in American history was undeniably the Declaration of Independence, arguably the most vital document in our Nation's history. Primarily authored by Thomas Jefferson, a Virginian, this declaration set the foundation for the American consciousness. Its opening lines, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness,” encapsulate the core values and beliefs that define us as a Nation.

I would also like to briefly touch upon George Washington. His plantation was situated across the Potomac in Virginia, a few miles from here. Before the revolution, he was considered the wealthiest man in America, comparable to the likes of Jeff Bezos or Elon Musk today. However, instead of investing in futuristic endeavors like rocket ships, Washington committed all his assets, fortune, and reputation to lead a struggling American army against the formidable British forces. His leadership and bravery not only helped secure our independence but also paved the way for him to become the first U.S. President, earning him the title of Founding Father of our country.

With the British monarchy's decision to grant the colonists their independence, the 13 Colonies found themselves at a crossroads, tasked with the monumental challenge of forming a new government.

In the aftermath of the Revolutionary War, delegates from each of the colonies convened at the Constitutional Convention in Philadelphia. Throughout a long and grueling summer, they meticulously crafted a document that would come to be known as the U.S. Constitution. This pivotal piece of history was chiefly written by James Madison and George Washington—both Virginians—alongside Benjamin Franklin from Pennsylvania.

During the convention, intense debates ensued between two primary factions of delegates. On one side were the Federalist Republicans from the Northeastern colonies, advocating for a strong, centralized Federal Government. On the opposing side were the Anti-Federalist Democrats from the Southern colonies, championing the cause of states' rights and a more decentralized form of Federal governance. The U.S. Constitution, born out of these deliberations, laid the crucial groundwork for the American Governmental system and established the basis of American law.

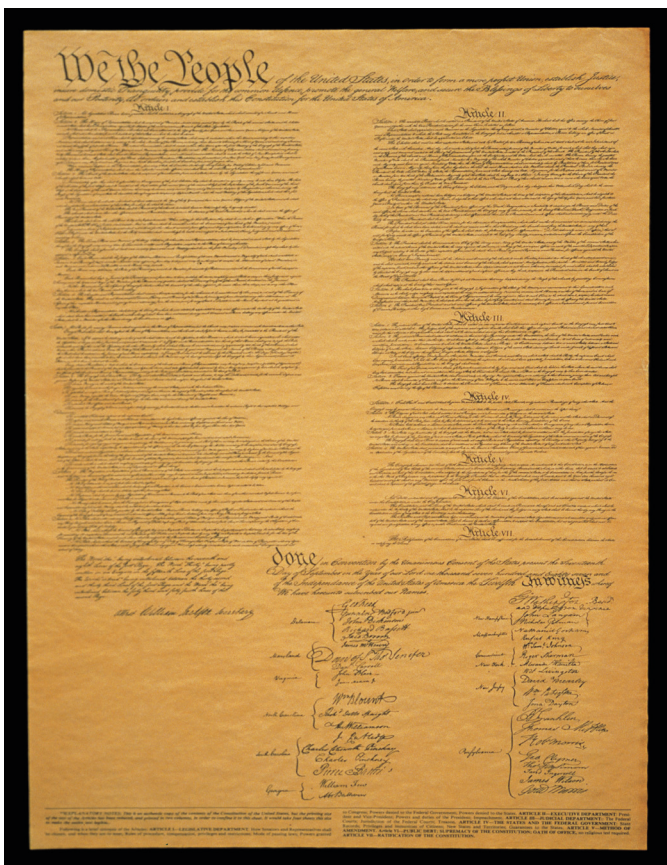
In their pursuit of a compromise, the delegates eventually agreed to add the Bill of Rights to the Constitution. This seminal document, comprising the first Ten Amendments, articulates the unassailable rights afforded to all Americans. These rights encompass freedoms such as speech and religion (First Amendment), the right to bear arms (Second Amendment), the assurance of due process (Fifth Amendment), and the entitlement to a jury trial (Sixth Amendment), among others.

Of particular relevance to our discussion is the Tenth Amendment, which asserts that any powers not explicitly granted to the United States by the Constitution are reserved for the individual states. Interpreted strictly, this amendment implies that any matter not addressed in the Constitution falls under the jurisdiction of the individual states. The Tenth Amendment's application was put to the test in 1819 during one of the Supreme Court's earliest and most consequential decisions in American history: McCulloch v. Maryland.

In McCulloch v. Maryland, the Supreme Court grappled with the question of whether the Federal Government had the authority to establish a central bank, a power not expressly granted by the Constitution. Advocates for states' rights contended that this power was beyond the Federal Government's reach. However, John Marshall, the first Chief Justice of the United States, ruled that the Constitution's implied powers provisions granted the Federal Government rights that extended beyond a strict interpretation of the document.

While McCulloch v. Maryland is frequently referenced by legal scholars, it often goes unnoticed in contemporary political debates surrounding the tension between states' rights and Federal authority. Furthermore, despite the unequivocal ruling in McCulloch v. Maryland, advocates for states' rights have persistently challenged the Federal Government's reach, contesting its authority beyond the limits set forth in the Constitution.

Over the course of the last 240 years, additional amendments have been incorporated into the Constitution, and some have been repealed, bringing the total to 27 Amendments. Despite these changes, the original Constitution continues to delineate the foundational principles of our Governmental system and has remained largely unaltered.





The Constitution establishes three branches of Government. The first of these is the Executive branch, which encompasses the President and the Vice President of the United States, as well as the President's Cabinet. The Cabinet includes offices such as the Secretary of State, Secretary of Defense, Secretary of Commerce, and others.

The legislative branch represents the second arm of the Federal Government. Divided into two separate entities, it is collectively known as the United States Congress. Congress is made up of the Senate and the House of Representatives. The Senate includes elected officials from each state, with two Senators per state, resulting in a total of 100 Senators. In contrast, the House of Representatives has elected Representatives from each state, with representation proportional to population. There are a total of 435 voting Representatives. While this arrangement may appear imbalanced, a balance is achieved because both the House and Senate must reach consensus on all legislative matters.

The Judiciary constitutes the third branch of Government. Established by the Judiciary Act of 1789, the United States Supreme Court is comprised of nine members, a number that has varied over time. Justices are appointed for life by the President and must be confirmed by the Senate. Since 1789, a total of 116 Justices have served on the Court.

Delving into the intricacies of the American court system is paramount for a comprehensive understanding of how the legal system works. Each state operates its own set of state courts. Parallel to this, there is a Federal court system in place within each state. The state courts address criminal issues involving state law. State court extends to civil disputes between individuals residing within the

same state. For example, cases involving crimes committed in violation of state law or civil disputes between citizens of the same state are adjudicated in state courts.

Conversely, the Federal courts address crimes involving breaches of Federal criminal statutes and laws. This encompasses Federal drug prosecutions, violations of Federal banking laws, and other Federal criminal matters. For instance, bank robbery falls under Federal jurisdiction since banks are Federally insured and regulated by Federal law. Moreover, the Federal courts are responsible for resolving civil disputes that involve disputes between citizens of different states. As an illustrative scenario, should a citizen from Washington state decide to sue a corporation headquartered in New York, the case would be litigated in a Federal court in New York.

In both the State and Federal systems, there are multiple tiers of courts. In the Federal court system, each state has Federal District Courts, staffed by Judges appointed for life by the President of the United States, subject to Senate confirmation. Decisions made in these 97 District Courts are subject to review by the Circuit Courts of Appeals, of which there are 11. These appellate courts are organized into geographic regions across the Nation. For instance, the West Coast falls under the jurisdiction of the Ninth Circuit. Additionally, there is a Twelfth Circuit dedicated to handling matters from Washington D.C., and a Thirteenth Circuit that addresses general court appeals. Judges in these courts are also appointed by the President for life. Decisions made by the Circuit courts may, in turn, be reviewed by the U.S. Supreme Court, if accepted for further examination.

Within the state of courts system, the hierarchy includes various levels, such as Municipal Courts, District Courts, Superior Courts, Courts of Appeals, and Supreme Courts. It is important to note that each state has its own unique structure and terminology for its courts.

Lastly, there are independent and sovereign Nations of indigenous peoples throughout the United States. Generally, these Nations are not subject to Federal or state law and operate their own court systems. The sole exception to this is the indigenous people of Hawaii, who are not recognized as having sovereign Nation status.

All states in the U.S. adhere to English Common Law, with the notable exception of Louisiana, which was originally a French colony. As a result, the state courts in Louisiana follow the Napoleonic Civil Code, while the Federal courts within that state adhere to English Common Law.

Feeling confused? You should be. It's a complex system, indeed.

You might also be pondering the necessity of having separate Federal and state systems, as well as the reason behind the three branches of government. The explanation is more straightforward than it may seem. At the inception of the United States, there was a pervasive lack of trust among the states towards each other, as well as a deep-seated skepticism towards the Federal Government—a sentiment that, to some extent, persists to this day.

There also existed a widespread disagreement regarding the interpretation of the Constitution. Notably, the Southern states favored a strict constructionist approach. This preference is not

surprising when considering that James Madison, a Virginian, was the principal architect of the Constitution. Conversely, the Northern states advocated for a more flexible interpretation, emphasizing the necessity of a robust Navy and standing Army—provisions not explicitly detailed in the Constitution.

Due to this mutual distrust, a Governmental system featuring checks and balances was established. Congress held the authority to pass laws, provided there was consensus between both the Senate and House of Representatives. States with larger populations wielded more influence, as they could elect a greater number of representatives. However, this power was counterbalanced by the Senate, where each state, regardless of size, was represented by two senators. Adding another layer to this system of checks and balances, the President had the power to override or veto decisions from Congress, while Congress retained the ability to override presidential decisions.



LANDMARK DECISIONS IMPACT THE COURSE OF U.S. HISTORY

Additionally, laws or decisions made by Congress or the President were subject to review by the Supreme Court, serving as the ultimate check and balance. Though this system could be perceived as somewhat dysfunctional, it fostered a sense of protection for all parties involved.

Now, you might be wondering, why does any of this matter, and how does it connect to our discussion today?

The first point of relevance is that this dispute sheds light on why the city Washington, D.C., exists at all. Following the Continental Congress, the U.S. Capitol was originally located in Manhattan, New York City. At that time, Washington, D.C., did not exist. It was characterized as a swampy, marshy area bordered by the Potomac River, straddling the colonies of Virginia and Maryland. Often depicted as a mosquito-infested swamp. Some might argue that this description still holds true today.

Trust in New Yorkers and New Englanders was scarce, particularly among Southerners. Consequently, a compromise was reached to establish a new city named Washington, D.C., in honor of the esteemed General and leader of the American Revolution, George Washington. The city's design was entrusted to a French architect, Pierre Charles L'Enfant, envisioning it to be the United States' first radial city, similar to Paris. The selected location was a neutral site, approximately equidistant from the North and the South, which also explains why Washington, D.C. is not a state. Instead, it is a district, formally recognized as the District of Columbia, with non-voting Congressmen and "shadow" Senators who remain unseated. The district falls under the jurisdiction and laws of Congress and the Federal Government.

With the establishment of Washington, D.C., the fledgling government commenced its operations. States maintained their right to operate their own court systems and manage their internal affairs through state governments. At this time, the Federal

Government was relatively small and largely ineffective, with the Southern states particularly resistant to granting it substantial authority. They sought autonomy to cultivate their crops, such as tobacco and cotton, and to employ slave labor. In contrast, the Northern states lobbied for a more expansive government, a centralized banking system, increased taxes, and funding for the Navy—a debate that persisted even following the McCulloch decision mentioned earlier.



In a relatively short period of time, an inevitable schism emerged between the Northern and Southern states. This divide was more than a mere geographical dispute. There was a growing debate over the extent of centralized Federal Government power versus the states' rights. A central point of contention was the issue of slavery—an issue that could not be overlooked. Great Britain had declared slavery illegal in 1834. While the importation of slaves into the United States was prohibited, the slave trade regrettably continued.

At that time, the slave-dependent economy of the South constituted the primary economic force in that region.

In contrast, the North, with its largely non-agrarian economy and burgeoning European immigrant labor force, had no need for slave labor. The leaders and

representatives of the North, rightfully and morally, reached a consensus that slavery was reprehensible. They advocated for its abolition and the liberation of the enslaved. At the very least, the more moderate members of the emerging Republican Party desired to confine slavery to those Southern states where it was already entrenched, opposing its expansion into new states as the United States expanded westward. Ironically, the Democrats of that era championed slavery, asserting that each state should possess the autonomy to decide whether or not to permit slavery within its borders.

As the United States pursued westward expansion, the tension between slave and free states intensified. In an effort to maintain congressional balance, Congress enacted the Missouri Compromise in 1820, resulting in the formation of two new states. According to this Federal legislation, Maine was admitted as a free state, while Missouri was designated a slave state. Furthermore, all territories North of Missouri, extending to the Pacific, were declared free territories. The Missouri Compromise underwent modifications with the Kansas-Nebraska Act of 1854, yet the demarcation between free and slave states endured. This demarcation was commonly known as the Mason-Dixon line.

This ongoing dispute culminated in one of the most pivotal decisions in the history of the United States Supreme Court- Dred Scott v. Sandford. Dred Scott, a freed slave residing in the free state of Illinois was originally from the slave state of Missouri. He was recaptured and returned to Missouri by his slave owners. In response, he filed a lawsuit claiming his right to freedom. He argued that his residence in Illinois granted him the status of a free citizen. The Supreme Court, however, ruled against Scott, stating that he was not entitled to sue as an American citizen. The Court also declared the Missouri Compromise of 1820 unconstitutional in its attempt to designate certain states as free or slave states. This verdict represented a victory for the Southern states' rights movement and those advocating for a strict interpretation of the U.S. Constitution. Conversely, Northern abolitionists regarded this decision as one of the Supreme Court's worst decisions—it very well might have been.

The Dred Scott decision, delivered in 1857, failed to quell the ongoing dispute. Rather as guerrilla warfare persisted in Kansas and Arkansas, Southerners and Northerners were left in a state of outrage.

“The Supreme Court kept me from my freedom” – Dred Scott

The tension reached its zenith in the presidential election of 1860, when Abraham Lincoln, a relatively obscure lawyer and congressman from Illinois—a Northern state opposed to slavery—was elected as President. Lincoln would subsequently ascend to become one of the most renowned, influential, and esteemed presidents in U.S. history. It is crucial to highlight that Lincoln did not campaign for presidency on an anti-slavery platform. Rather, his focus was on championing a robust Federal Government and fostering a united coalition of states, as opposed to advocating for state individualism.

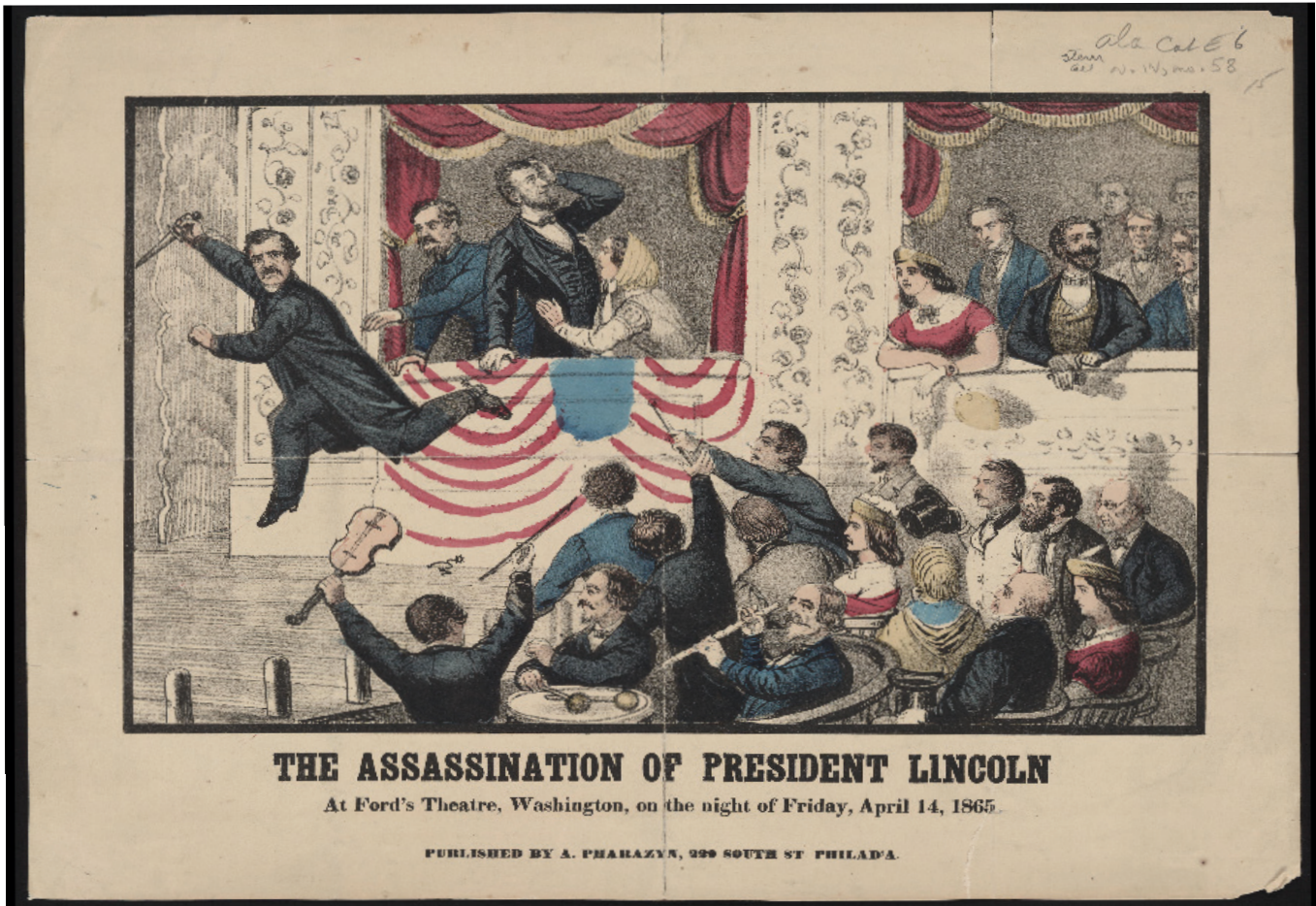
Following Lincoln's election and subsequent inauguration, the Southern states decided they had reached their breaking point. In January of 1861, shortly after his swearing-in, several slave states initiated a revolt.

South Carolina took a defiant stand, attacking a Union fort in Charleston Harbor and proclaiming itself a free and independent state. Other Southern states, including Virginia—situated just across the river—joined the rebellion. In an ironic parallel, this treasonous event bears a resemblance to the January 6th insurrection carried out by far-right Conservatives in the wake of Joe Biden's election and his inauguration in January of 2021.

In response, the Northern states united in their demand for the Southern states to rejoin the Union. Positioned between the conflicting sides, states such as Maryland and the newly formed West Virginia (established due to the presence of anti-slavery advocates in the western part of Virginia, contrasting with pro-slavery sentiments in the eastern region) found themselves in a state of uncertainty, unsure of how to proceed.

Many today perceive the Civil War primarily as a conflict over slavery. Yet in many ways, it was more fundamentally a dispute over states' rights, and a confrontation between advocates of states' rights and proponents of a centralized Federal Government. For instance, the majority of Southerners did not own slaves and were not particularly invested in the issue

SIC TEMPER TYRANNIS



of slavery itself. Their main concern was resisting directives from a Northern Federal Government they distrusted. On the other hand, most Northern troops were farmers, tradesmen, and recent immigrants. They viewed slaves as competitors for job opportunities. In fact, a significant number of Northern soldiers were forcibly drafted or conscripted to fight.

Additionally, a constitutional dilemma persisted, centered around the Fifth Amendment's right to due process, with most Southerners interpreting the Federal Government's actions as an unlawful deprivation of their property—in this case, their slaves.

Now, as the pieces start to fall into place, you can now understand the trust issues between advocates of states' rights and supporters of a centralized government, and their differing interpretations of how strictly the U.S. Constitution should be adhered to.

The Civil War ultimately drew to its gruesome close in April 1865. Shortly before the conflict's resolution, Abraham Lincoln successfully secured re-election in the 1864 election. Running as a Republican, he triumphed over a Democratic opponent who predominantly supported states' rights and the pro-slavery cause—an ironic comment on political party labels. Slavery was finally eradicated with the ratification of the 13th Amendment in 1865.

Tragically, Abraham Lincoln fell victim to assassination in April 1865, just before the war concluded. Today, we will visit Ford's Theater, the site of this grim event. His assassin, John Wilkes Booth, a renowned Shakespearean actor, shot Lincoln in a private booth. Following the act, he leapt onto the stage from the Booth, only to have the stars and stripes bunting below the booth catch on the spur of his riding boot, causing him to stumble. It's almost too extraordinary to believe—the Flag of the Union tripped up the assassin of the Confederacy. Nevertheless, John Wilkes Booth managed to stand

and declare to the audience, “Sic semper tyrannis,” a phrase taken directly from Shakespeare’s Julius Caesar, translating to “Thus always to tyrants.” This act clearly embodied his belief that the President and the Union were tyrannical forces imposing their will on the Southern states’ rights. Intriguingly, this phrase remains the motto of the Commonwealth of Virginia to this day, prominently displayed on their state flag.

Why is the Civil War deemed such a crucial historical juncture in U.S. history? The answer is straightforward. The ongoing battle between advocates of states’ rights and proponents of a strong centralized government persists to this day. The debate over whether to interpret the Constitution strictly or more liberally is still an issue. This fundamental disagreement underpins most of the political disputes in the United States. Presently, there are Republicans who champion states’ rights, advocating for reduced Federal Government intervention, lower taxes, and a diminished Federal Government, wishing to see states handle their own affairs independently. On the other hand, Democrats call for a robust Federal Government that uniformly protects all rights, regardless of an individual’s location. Furthermore, the related debate over how stringently to interpret the Constitution continues to be a hot topic.

The heated debate over gun control and the practical application of the Second Amendment’s “right to bear arms” perfectly illustrates this dispute. Advocates of the Second Amendment call for a strict interpretation of the Constitution and the Amendment itself, while modern progressives consider the Second Amendment outdated, viewing it as a potential threat to American society’s safety. These disagreements resonate throughout Congress and the broader American political landscape.

The current Republican Party stands as a beacon for states’ rights, embodying a movement that gravitates towards limited government. In contrast, the Democratic Party is often associated with expansive government spending, a powerful Federal presence, and the provision of extensive Government services.

This discussion seamlessly leads us to the recent Supreme Court decision in Dobbs v. Jackson. When this verdict was handed down in June of 2022, legal experts around the world argued its ramifications. The United States Supreme Court, through this ruling, overturned the 1973 decision known as Roe v. Wade. In Roe v. Wade, a predominantly Democratic Supreme

Court held that Federal legislation safeguarding a woman’s abortion rights was constitutionally valid, aiming to protect all women, regardless of where they lived. Prior to Roe v. Wade, abortion rights fell under the jurisdiction of individual states, resulting in many jurisdictions where abortion was illegal. The Roe court maintained that, under the Equal Protection Clause of the U.S. Constitution, every citizen deserved protection.

However, the decision in Dobbs v. Jackson marked a reversal of that previous stance. To most non-lawyers, the ruling seems to just be a ruling that abolishes the right to chose. Practically speaking, that is the result. Nonetheless, the central issue of the decision is not strictly pro or anti-abortion. The real dispute revolves around whether the Federal Government or individual states should have the authority to regulate this matter. It is, at its core, a verdict on State versus Federal rights and a matter of Constitutional problems.

The Supreme Court determined that the matter of abortion rights should fall under the jurisdiction of individual states, rather than being Federally mandated, asserting that a law granting the right to an abortion is incongruent with a stringent interpretation of the Constitution. Thus, the age-old struggle between states’ rights and a Federal Government, as well as the manner in which the Constitution is interpreted, was squarely at the center of this decision. This debate, which has roots predating the founding of the United States, shows no signs of abating.

The term “Gathering Storm,” poignantly used to depict the events leading up to the American Civil War, offers a foreboding glimpse into the Nation’s potential future.

“A house divided against itself cannot stand” - Abraham Lincoln

Currently, Federal laws designed to protect individual rights are under scrutiny by the Supreme Court. For example, Federal laws that affirm the marriage rights of same-sex couples are now facing challenges. Should the rights related to sexual freedom be determined by the Federal Government or left to individual states? Similar questions arise in issues like marijuana legalization, with debates centered on whether they should be regulated at the state or



Federal level. More broadly, these debates are fueling the mistrust, animosity, and political turbulence that are sweeping across the U.S. The rural populace, particularly in the South, holds admiration for Trump, whereas educated liberals in more urban areas generally do not share this sentiment. Even within the Republican Party, divisions are apparent. The palpable discord that was evident on January 6th serves as a stark testament to these divisions, and the potential for intensification is high.

Abraham Lincoln's renowned Gettysburg Address, one of the briefest in American history, may have encapsulated America's essence more accurately than any other speech. Lincoln eloquently stated:

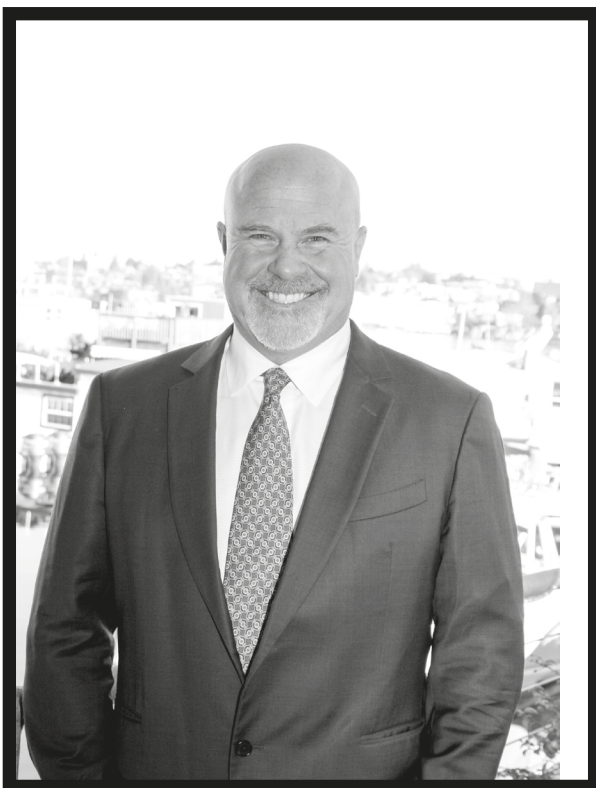
“Fourscore and seven years ago our fathers brought forth on this continent, a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal.

Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived, and so dedicated, can long endure. We are met on a great battle-field of that war. We have come to dedicate a portion of that field, as a final resting-place for those who here gave their lives, that that nation might live. It is altogether fitting and proper that we should do this.

But, in a larger sense, we cannot dedicate, we cannot consecrate—we cannot hallow—this ground. The brave men, living and dead, who struggled here, have consecrated it far above our poor power to add or detract. The world will little note, nor long remember what we say here, but it can never forget what they did here. It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they here gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom, and that government of the people, by the people, for the people, shall not perish from the earth.”

FINAL THOUGHTS

Americans are set to face these challenges once again in the upcoming 2024 election. The outcomes will play a critical role in shaping the composition of the Supreme Court, defining the nature of Federal laws, and influencing America's self-perception. However, it seems improbable that this election will bring about a significant change in the Nation's entrenched divisions. The dilemmas that have persisted since before the American Revolution are, in all likelihood, here to stay. As Abraham Lincoln insightfully stated in an 1858 election speech: "A house divided against itself cannot stand." His words continue to resonate, echoing eerily from his grave.



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