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Lysander Spooner, *A Letter to Thomas Bayard: Challenging his right - and that of all the other so-called Senators and Representatives in Congress - to exercise and Legislative Power whatever over the People of the United States* [1882]



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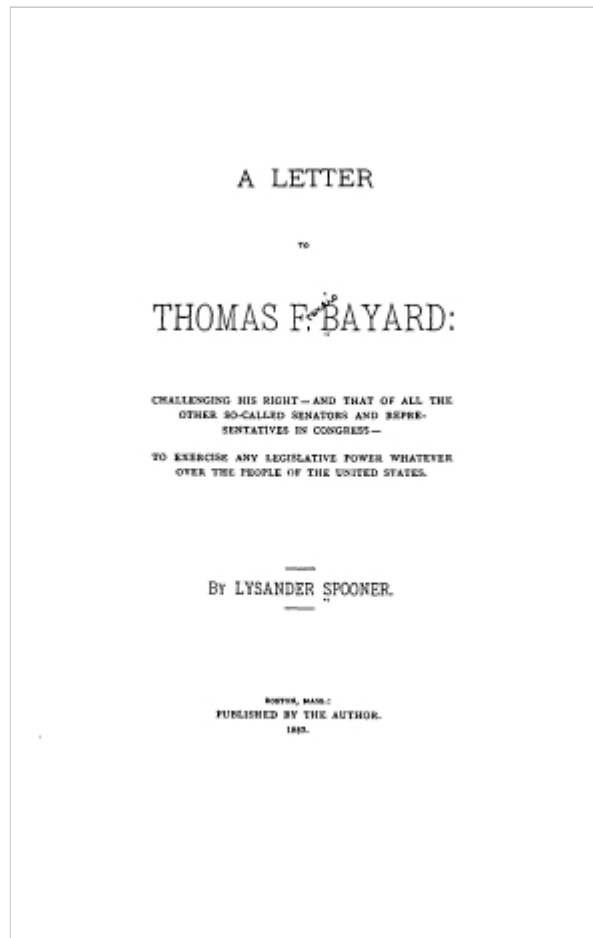
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Author: [Lysander Spooner](#)

About This Title:

A letter which first appeared in Benjamin Tucker's journal *Liberty* in 1882. Bayard was a Democratic Senator from the state of Delaware who believed that enlightened people like himself were the fittest to govern in the US. Spooner rejected this idea.

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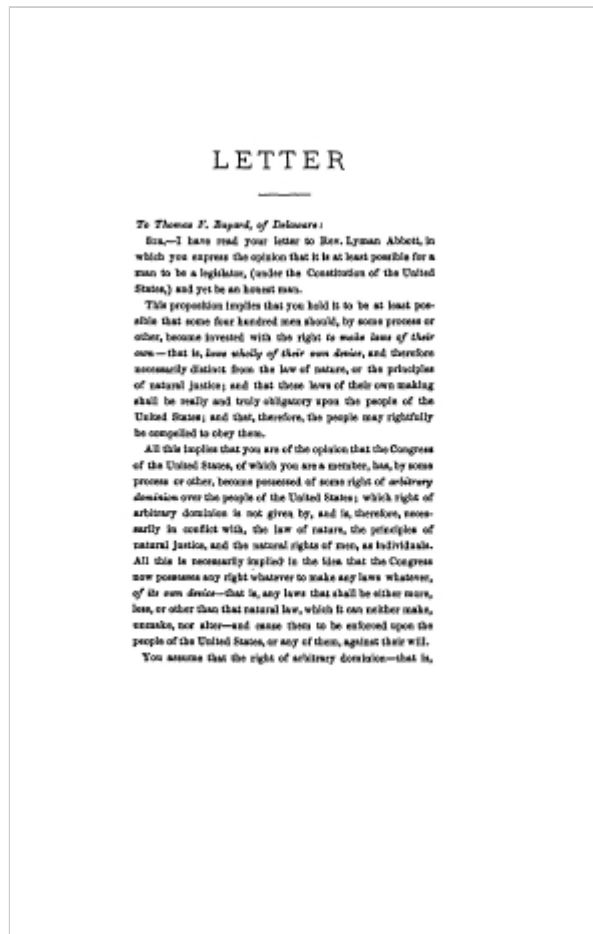


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LETTER

To Thomas F. Bayard, Of Delaware:

Sir,—

I have read your letter to Rev. Lyman Abbott, in which you express the opinion that it is at least possible for a man to be a legislator, (under the Constitution of the United States,) and yet be an honest man.

This proposition implies that you hold it to be at least possible that some four hundred men should, by some process or other, become invested with the right *to make laws of their own*—that is, *laws wholly of their own device*, and therefore necessarily distinct from the law of nature, or the principles of natural justice; and that these laws of their own making shall be really and truly obligatory upon the people of the United States; and that, therefore, the people may rightfully be compelled to obey them.

All this implies that you are of the opinion that the Congress of the United States, of which you are a member, has, by some process or other, become possessed of some right of *arbitrary dominion* over the people of the United States; which right of arbitrary dominion is not given by, and is, therefore, necessarily in conflict with, the law of nature, the principles of natural justice, and the natural rights of men, as individuals. All this is necessarily implied in the idea that the Congress now possesses any right whatever to make any laws whatever, *of its own device*—that is, any laws that shall be either more, less, or other than that natural law, which it can neither make, unmake, nor alter—and cause them to be enforced upon the people of the United States, or any of them, against their will.

You assume that the right of arbitrary dominion—that is, the right of making laws of their own device, and compelling obedience to them—is a “trust” that has been delegated to those who now exercise that power. You call it “*the trust of public power.*”

But, Sir, you are mistaken in supposing that any such power has ever been delegated, or ever can be delegated, by any body, to any body.

Any such delegation of power is naturally impossible, for these reasons, viz:—

1. No man can delegate, or give to another, any right of arbitrary dominion over himself; for that would be giving himself away as a slave. And this no one can do. Any contract to do so is necessarily an absurd one, and has no validity. To call such a contract a “Constitution,” or by any other high-sounding name, does not alter its character as an absurd and void contract.

2. No man can delegate, or give to another, any right of arbitrary dominion over a third person; for that would imply a right in the first person, not only to make the third person his slave, but also a right to dispose of him as a slave to still other persons. Any contract to do this is necessarily a criminal one, and therefore invalid. To call such a contract a “Constitution” does not at all lessen its criminality, or add to its validity.

These facts, that no man can delegate, or give away, his own natural right to liberty, nor any other man’s natural right to liberty, prove that he can delegate no right of arbitrary dominion whatever—or, what is the same thing, no legislative power whatever—over himself or any body else, to any man, or body of men.

This impossibility of any man’s delegating any legislative power whatever necessarily results from the fact, that the law of nature has drawn the line, and the only line—and that, too, a line that can never be effaced nor removed—between each man’s own inherent and inalienable rights of person and property, and each and every other man’s inherent and inalienable rights of person and property. It, therefore, necessarily fixes the unalterable limits, within which every man may rightfully seek his own happiness, in his own way, free from all responsibility to, or interference by, his fellow men, or any of them.

All this pretended delegation of legislative power—that is, of a power, on the part of the legislators, so-called, to make any laws of their own device, distinct from the law of nature—is therefore an entire falsehood; a falsehood, whose only purpose is to cover and hide a pure usurpation, by one body of men, of arbitrary dominion over other men.

That this legislative power, or power of arbitrary dominion, is a pure usurpation, on the part of those who now exercise it, and not “a trust” delegated to them, is still further proved by the fact that the only delegation of power, that is even professed or pretended to be made, is made *secretly*—that is, *by secret ballot*—and not in any open and authentic manner; and therefore not by any men, or body of men, who make themselves personally responsible, as principals, for the acts of those to whom they profess to delegate the power.

All this pretended delegation of power having been made secretly—that is, only by secret ballot—not a single one of all the legislators, so-called, who profess to be exercising only a delegated power, has himself any legal knowledge, or can offer any legal proof, as to who the particular individuals were, who delegated it to him. And having no power to identify the individuals who professed to delegate the power to him, he cannot show any legal proof that any body ever even attempted or pretended to delegate it to him.

Plainly a man, who exercises any arbitrary dominion over other men, and who claims to be exercising only a delegated power, but cannot show who his principals are, nor, consequently, prove that he has any principals, must be presumed, both in law and reason, to have no principals; and therefore to be exercising no power but his own.

And having, of right, no such power of his own, he is, both in law and reason, a naked usurper.

Sir, a secret ballot makes a secret government; and a secret government is a government by conspiracy; in which the people at large can have no rights. And that is the only government we now have. It is the government of which you are a voluntary member, and supporter, and yet you claim to be an honest man. If you are an honest man, is not your honesty that of a thoughtless, ignorant man, who merely drifts with the current, instead of exercising any judgment of his own?

For still another reason, all legislators, so-called, under the Constitution of the United States, are exercising simply an arbitrary and irresponsible dominion of their own; and not any authority that has been delegated, or pretended to have been delegated, to them. And that reason is, that the Constitution itself (Art. 1, Sec. 6) prescribes that:—

“For any speech or debate [or vote] in either house, they [the Senators and Representatives] shall not be questioned [held to any legal responsibility] in any other place.”

This provision makes the legislators constitutionally irresponsible to anybody; either to those on whom they exercise their power, or to those who may have, either openly or secretly, attempted or pretended to delegate power to them. And men, who are legally responsible to nobody for their acts, cannot truly be said to be the agents of any body, or to be exercising any power but their own: for all real agents are necessarily responsible both to those *on* whom they act, and to those *for* whom they act.

To say that the people of this country ever have bound, or ever could bind, themselves by any contract whatever—the Constitution, or any other—to thus give away all their natural rights of property, liberty, and life, into the hands of a few men—a mere conclave—and that they should make it a part of the contract itself that these few men should be held legally irresponsible for the disposal they should make of those rights, is an utter absurdity. It is to say that they have bound themselves, and that they could bind themselves, by an utterly idiotic and suicidal contract.

If such a contract had ever been made by one private individual to another, and had been signed, sealed, witnessed, acknowledged, and delivered, with all possible legal formalities, no decent court on earth—certainly none in this country—would have regarded it, for a moment, as conveying any right, or delegating any power, or as having the slightest legal validity, or obligation.

For all the reasons now given, and for still others that might be given, the legislative power now exercised by Congress, is, in both law and reason, a purely personal, arbitrary, irresponsible, usurped dominion on the part of the legislators themselves, and not a power delegated to them by anybody.

Yet under the pretence that this instrument gives them the right of an arbitrary and irresponsible dominion over the whole people of the United States, Congress has now

gone on, for ninety years and more, filling great volumes with laws of their own device, which the people at large have never read, nor even seen, nor ever will read or see; and of whose legal meanings it is morally impossible that they should ever know any thing. Congress has never dared to require the people even to read these laws. Had it done so, the oppression would have been an intolerable one; and the people, rather than endure it, would have either rebelled, and overthrown the government, or would have fled the country. Yet these laws, which Congress has not dared to require the people even to read, it has compelled them, at the point of the bayonet, to obey.

And this moral, and legal, and political monstrosity is the kind of government which Congress claims that the Constitution authorizes it to impose upon the people.

Sir, can you say that such an arbitrary and irresponsible dominion as this, over the properties, liberties, and lives of fifty millions of people—or even over the property, liberty, or life of any one of those fifty millions—can be justified on any reason whatever? If not, with what color of truth can you say that you yourself, or anybody else, can act as a legislator, under the Constitution of the United States, and yet be an honest man?

To say that the arbitrary and irresponsible dominion, that is exercised by Congress, has been delegated to it by the Constitution, *and not solely by the secret ballots of the voters for the time being*, is the height of absurdity; for what is the Constitution? It is, at best, a writing that was drawn up more than ninety years ago; was assented to at the time only by a small number of men; generally those few white male adults who had prescribed amounts of property; probably not more than two hundred thousand in all; or one in twenty of the whole population.

Those men have been long since dead. They never had any right of arbitrary dominion over even their contemporaries; and they never had any over us. Their wills or wishes have no more rightful authority over us, than have the wills or wishes of men who lived before the flood. They never personally signed, sealed, acknowledged, or delivered, or dared to sign, seal, acknowledge, or deliver, the instrument which they imposed upon the country as law. They never, in any open and authentic manner, bound even themselves to obey it, or made themselves personally responsible for the acts of their so-called agents under it. They had no natural right to impose it, as law, upon a single human being. The whole proceeding was a pure usurpation.

In practice, the Constitution has been an utter fraud from the beginning. Professing to have been “ordained and established” by “*We, the people of the United States,*” it has never been submitted to them, as individuals, for their voluntary acceptance or rejection. They have never been asked to sign, seal, acknowledge, or deliver it, as their free act and deed. They have never signed, sealed, acknowledged, or delivered it, or promised, or laid themselves under any kind of obligation, to obey it. Very few of them have ever read, or even seen it; or ever will read or see it. Of its legal meaning (if it can be said to have any) they really know nothing; and never did, nor ever will, know any thing.

Why is it, Sir, that such an instrument as the Constitution, for which nobody has been responsible, and of which few persons have ever known any thing, has been suffered to stand, for the last ninety years, and to be used for such audacious and criminal purposes? It is solely because it has been sustained by the same kind of conspiracy as that by which it was established; that is, by the wealth and the power of those few who were to profit by the arbitrary dominion it was assumed to give them over others. While the poor, the weak, and the ignorant, who were to be cheated, plundered, and enslaved by it, have been told, and some of them doubtless made to believe, that it is a sacred instrument, designed for the preservation of their rights.

These cheated, plundered, and enslaved persons have been made to feel, if not to believe, that the Constitution had such miraculous power, that it could authorize the majority (or even a plurality) of the male adults, for the time being—a majority numbering at this time, say, five millions in all—to exercise, through their agents, secretly appointed, an arbitrary and irresponsible dominion over the properties, liberties, and lives of the whole fifty millions; and that these fifty millions have no rightful alternative but to submit all their rights to this arbitrary dominion, or suffer such confiscation, imprisonment, or death as this secretly appointed, irresponsible cabal, of so-called legislators, should see fit to resort to for the maintenance of its power.

As might have been expected, and as was, to a large degree, at least, intended, this Constitution has been used from the beginning by ambitious, rapacious, and unprincipled men, to enable them to maintain, at the point of the bayonet, an arbitrary and irresponsible dominion over those who were too ignorant and too weak to protect themselves against the conspirators who had thus combined to deceive, plunder, and enslave them.

Do you really think, Sir, that such a constitution as this can avail to justify those who, like yourself, are engaged in enforcing it? Is it not plain, rather, that the members of Congress, as a legislative body, whether they are conscious of it, or not, are, in reality, a mere cabal of swindlers, usurpers, tyrants, and robbers? Is it not plain that they are stupendous blockheads, if they imagine that they are anything else than such a cabal? or that their so-called laws impose the least obligation upon anybody?

If you have never before looked at this matter in this light, I ask you to do so now. And in the hope to aid you in doing so candidly, and to some useful purpose, I take the liberty to mail for you a pamphlet entitled:

“Natural Law; or the Science of Justice; *a Treatise on Natural Law, Natural Justice, Natural Rights, Natural Liberty, and Natural Society; Showing That All Legislation Whatsoever Is an Absurdity, A Usurpation, and a Crime. Part I.*

In this pamphlet, I have endeavored to controvert distinctly the proposition that, by any possible process whatever, any man, or body of men, can become possessed of any right of arbitrary dominion over other men, or other men’s property; or, consequently, any right whatever to make any law whatever, *of their own*—distinct from the law of nature—and compel any other men to obey it.

I trust I need not suspect you, as a legislator under the Constitution, and claiming to be an honest man, of any desire to evade the issue presented in this pamphlet. If you shall see fit to meet it, I hope you will excuse me for suggesting that—to avoid verbiage, and everything indefinite—you give at least a single specimen of a law that either heretofore has been made, or that you conceive it possible for legislators to make—that is, some law of their own device—that either has been, or shall be, really and truly obligatory upon other persons, and which such other persons have been, or may be, rightfully compelled to obey.

If you can either find or devise any such law, I trust you will make it known, that it may be examined, and the question of its obligation be fairly settled in the popular mind.

But if it should happen that you can neither find such a law in the existing statute books of the United States, nor, in your own mind, conceive of such a law as possible under the Constitution, I give you leave to find it, if that be possible, in the constitution or statute book of any other people that now exist, or ever have existed, on the earth.

If, finally, you shall find no such law, anywhere, nor be able to conceive of any such law yourself, I take the liberty to suggest that it is your imperative duty to submit the question to your associate legislators; and, if they can give no light on the subject, that you call upon them to burn all the existing statute books of the United States, and then to go home and content themselves with the exercise of only such rights and powers as nature has given to them in common with the rest of mankind.

LYSANDER SPOONER.

Boston, May 27, 1882.