THE CONSTITUTION

AN INSTRUMENT OF DEMOCRACY

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FOREWORD

You have heard much talk and read more or less in the newspapers about the Constitution. The Constitution itself is printed in many places; everybody can read it. But it is more than a printed document that a group of eminent men prepared 150 years ago and to which a few amendments have since been added. The reading of it does not explain what it means today.

For in a century and a half the world has changed greatly. Our ways of living are very different from those of even fifty years ago. As new problems arise, we try to apply old patterns and old principles to them, and this process may change the patterns and even some of the principles. So the Constitution, once called "the new roof," has changed as many things have been brought under the roof that its makers could not foresee. The roof has been patched and lifted and stretched. We have made it do very well, but it has had to cover a quite different kind of structure from what existed when it was built.

We have tried in these pages to sketch the original ideas of the Constitution, its growth through the years, and its present use.

You may like to read first all the eleven chapters in the order in which they appear in the book, and to refer to the annotated Constitution on pages 147-183 as you

may wish or find suggestions. Or you may prefer to read the Constitution itself before you read the chapters that precede it.

It is our aim to help you understand how the Constitution functions as an instrument of democracy; how we have been able to adapt it to the needs of the people, without many formal alterations, through years of amazing growth and change, preserving liberty under law, while extending even farther the area of social control.

THE AUTHORS

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READING SUGGESTIONS

A comprehensive exposition of the topics touched upon in this volume may be found in *American National Government,* by S. P. Orth and R. E. Cushman (1935). About sixty representative cases on constitutional problems, including New Deal decisions, are printed with background notes in *Leading Constitutional Decisions,* by R. E. Cushman (7th Edition, 1940). A concise discussion of the constitutional problems of the New Deal may be found in Public Affairs Pamphlet No. 7, *The Supreme Court and The Constitution,* by R. E. Cushman.

The subject of judicial review is dealt with adequately and dispassionately in *The American Doctrine of Judicial Supremacy,* by C. G. Haines (2d Edition, 1932). The ablest defense of judicial review is that of *Congress, the Constitution, and the Supreme Court,* by C. Warren (2d Edition, 1936). An able attack is found in *Government by Judiciary,* by L. Boudin (2 volumes, 1932).

An excellent short book on the Court and its work is *The Supreme Court of the United States,* by C. E. Hughes (1928).

A valuable exposition of the Constitution, clause by clause, is given in a little volume, *The Constitution and What It Means Today,* by E. S. Corwin (4th Edition, 1934). The standard treatise on the Constitution is the three-volume work *On the Constitution,* by W. W. Willoughby (1929); also in a compact edition (1931).

Bulwark of the Republic, by Burton J. Hendrick (1937), is an entertaining and informing "biography" of the Constitution, reflecting a personal point of view in some respects but giving much fresh material. *Democracy and the Supreme Court,* by R. K. Carr (1936), is an exceptionally readable little volume devoted mainly to recent court interpretations of the Constitution. *Storm over the Constitution,* by Irving Brant, is a widely read recent book; also *The Supreme Court and the National Will,* by D. Alfange (1937).

Some of the many excellent and authoritative accounts of the history of the Constitution are: *The Framing of the Constitution,* by M. Farrand (1913); *The Making of the Constitution,* by C. Warren (2d Edition, 1937); *The Constitution of the United States,* by R. L. Schuyler (1923); *The Confederation and the Constitution,* by A. C. McLaughlin (1905); *The Economic Interpretation of the Constitution,* by C. A. Beard (1913); *New Viewpoints in American History,* by A. M. Schlesinger, Chapter VIII (1922).

Court and all other Officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The Senate usually ratifies treaties negotiated by the President but there have been many exceptions. The Senate refused to ratify the Versailles Treaty which President Wilson had been largely instrumental in drawing up. The Senate may make reservations to a treaty. Although the United States failed to become a member of the League of Nations, a large body of opinion favored our entrance into the World Court. Several amendments were advanced which it was thought would meet all American objections. Even so, the last time the World Court treaty came before the Senate, in 1933, the Senate failed by a small margin to give the two-thirds vote necessary for ratification.

The extension of the federal government into many new fields with the addition of thousands of government employees has given to the appointing power of the President even greater significance. The efficiency of our government will depend even more than in the past upon the quality, experience, and capacity of these employees. The recent moves to put more of these appointments under high-standard civil-service rules are in line with the requirements of good administration. Every President of recent years has been keenly aware of the necessity for such action.

A Civil Service Commission, first set up in 1883, frames the rules for appointment to the public service, arranges for examinations, and keeps lists of qualified persons from which it makes recommendations when appointments are open. Removal of employees so appointed is permitted only for just cause, for reasons stated in writing, and after a hearing. About 500,000 federal employees are under the classified civil service rules.

Whether the President has the power to remove officers appointed with the consent of the Senate has been a debatable question. Recent decisions of the Supreme Court have given the President power to remove such officers without consultation with or approval of the Senate, except officers or members of commissions set up by Congress as independent of the President or any executive department, for example the Comptroller-General and Federal Trade Commission.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

The recommendations that the President sees fit to give to Congress frequently have great effect upon the legislation passed. Some Presidents have chosen to read messages to Congress in person, while others have sent their messages to Congress to be read by the clerk of each house. Washington and Adams delivered their own messages in person. Jefferson sent his message to Congress and established a precedent which was maintained until Wilson, a master of the delivery of public address, revived the practice of coming before Congress in person.

There have been many special or extraordinary sessions of Congress. For example, Franklin D. Roosevelt called the new Congress into extraordinary session immediately upon taking office in March 1933, in order to take steps to mitigate the severity of the depression.

Section 4. The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

The impeachment procedure is provided for in Article 1, Sections 2 and 3.

ARTICLE III

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

The Supreme Court cannot be abolished nor can judicial power be taken from it by act of Congress, except as provided in the next section. The organization and existence of the inferior courts lie within the discretion of Congress.

The territorial courts, such as those of Hawaii and Alaska, and such special courts as the Court of Claims and the Court of Customs are not created under the authority of this Article, but under other delegated powers of Congress. They do not enjoy "the judicial power of the United States" within the meaning of this section, nor do these judges hold office during "good behavior" subject to dismissal by impeachment only. These courts and the judges are creations of Congress and could be made subject to dismissal according to such regulations as Congress might set up.

Congress has the power to determine the size of the Supreme Court. Congress in 1789 provided for six members of the Supreme Court; in 1801 reduced the number to five; in 1802 put it back at six; in 1807 raised the number to seven; in 1837, to nine; in 1863, to ten. Then in 1869 Congress reduced the number to seven; in 1870, raised it again to nine.

Extent of the Judicial Power

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a party;—to Controversies between two or more States;—between a State and Citizens of another State; —between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

"Cases in law" arise under the English common law and the statute law as passed from time to time by the proper legislative bodies. "Equity" is that branch of law which was developed by the English courts chiefly to render what may be called preventive justice. If a person threatens to do some act which would injure a second person, the second person can secure protection of his threatened rights in a court of equity. Such protection was not provided

for in English common law. Equity was developed to meet these needs. When a case in equity is tried, the same courts and the same judges that try common law and statute cases are used, but the court is said to be sitting in equity.

The provisions of the above paragraph of the Constitution can be summarized under two heads. The federal "judicial power" extends to two types of cases: first, those depending on the nature of the controversy; second, those depending on what parties are involved. When the nature of the controversy involves some question of federal law, then the case is properly subject to federal "judicial power." When the parties involve the United States, or a federal officer, or a unit of the federal government, such as a state or citizens of different states, then the case is properly subject to federal "judicial power." In this latter group come "diversity of citizenship" cases. "Diversity of citizenship" exists when one party to a dispute lives in one state and the other party lives in another state. The case may deal with a purely state power, as a dispute over a business contract, but may yet be brought into the federal courts as citizens of two different states are involved.

The courts defend their right to pass upon the validity of legislative acts, and to hold those acts void when they conflict with the Constitution on the ground that this is an inherent part of the "judicial power" conferred by this article of the Constitution, and exercised in deciding cases and controversies properly before the Court. However, the federal courts have developed the rule that they do not pass upon "political" questions. A question of constitutional construction, the final interpretation of which is left to the "political departments" (Congress and the President) and not to the courts, is known as a "political" question. Some leading examples of "political" questions are: questions respecting the rights and obligations of the United States in its relations with other sovereign powers; whether a state government is "republican" in the meaning of the Constitution; whether congressmen are properly qualified and thereby may assume their seats in Congress.

In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.