

THE CONSTITUTION

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We are met here to increase interest in and respect for the fundamental laws of our country.

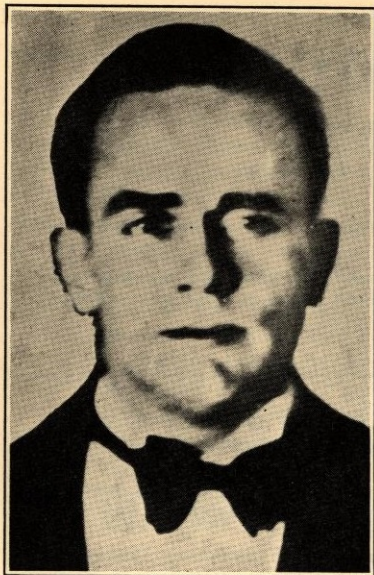
To a few this high purpose might be effected by tracing the beginnings of the constitutional concept from Coke and Vattel to the historic chamber in Philadelphia where for the first time an important nation was given a written constitution wrapped in the solitude of its own originality. We might glory in the fact that today written constitutions modelled on our experiment are found not only in both Americas but in Europe, the Dark Continent, and even in the land of the Rising Sun.

To a few it is the dramatic story of the difficulties and struggles of a handful of men who for four months attempted to reconcile divergent opinions until by mutual concession and compromise the document emerged in September, 1787, a concord born of contraries.

To a few the Constitution is respected because of its original underlying principles: the distrust of legislative power, the protection of the minority, and the protection of property rights.

Some Americans have come to assume with Waldo that the Constitution was "constructed by shrewd but spiritually callous men" and "protected occultly by nine pontifical judges—high priests without a god."

The time has come when we must re-evaluate our personal relations to the Constitution, when all citizens must see and doubt not that in the Constitution



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"through the ages one increasing purpose runs."

Historians have recorded the contributions of Washington, Hamilton, Jefferson, and Marshall to the Constitution. After them we see Webster sacrifice the presidency because his clarion voice proclaimed that the Constitution was not "a rope of sand," not "a league with death and a covenant with hell." It was in the trumpet-tongued accents of Webster that all America heard for the first time with crystalline clearness, "The people erected this government." Then came the immortal Lincoln whose Gettysburg and Second Inaugural Addresses epitomized, whose indomitable aspirations awakened, and whose humble wisdom directed the energies that preserved the Union under the Constitution.

But in the great inconsistency and crowd of events today, the light of the past is faded. The question which confronts us is: How can a

document which was written under the influence and in the phraseology of the natural-rights philosophy of the eighteenth century individualism meet the needs of twentieth century collective and interdependent cooperation? The two are contradictory. Safe in the hallowed quiet of the past we are prone to view the Constitution and its heroic framers and defenders with only an historic interest. Yesterday seems neither vital nor dynamic in the face of stern today.

What is it that causes each new generation of Americans to feel the strength, acclaim the solidity, and cherish the wisdom of the Constitution? To know the answer to this question will make all our customary and ordinary ideas about the Constitution significant. Without this knowledge we are apt to permit respect for the Constitution to go by default, leaving it to lawyers and historians.

We shall not go back to those famous cases which have become so surrounded by halos of historic sentiment that they are no longer significant nor vital. From *Marbury vs. Madison*, and *McCullough vs. Maryland* to the *Dred Scott* decision, the Constitution so stood the test of those times that the glory of contending forces died not but their grief is past. Let us make our starting point within the experience of this generation.

In 1904 a case reached the Supreme Court involving only fifty dollars, a sum and a case such as any of us might experience. This case,

the celebrated oleomargarine case of *McCray vs. U. S.*, marked a turning point in our conception of the Constitution. The Supreme Court held that it could not inquire into the motives and purposes of Congress. Yet in 1922 in *Bailey vs. Drexel*, the Supreme Court did announce its rights to inquire into the motives and purposes of Congress.

In 1905 New York had a state law prohibiting bakeries employing men more than sixty hours a week or ten hours a day. In *Lochner vs. New York* the Supreme Court held by a five to four decision that the law interfered with a man's individual liberty to sell his own labor—that the public is not affected by long hours as long as the bread is just as wholesome. In 1908, however, the Supreme Court in *Muller vs. Oregon* upheld a law limiting the hours of labor for women only. Yet today the Supreme Court upholds the numerous state and federal laws regulating the hours of labor of not only women and children, but also of men. There was a time under the fellow servant doctrine, when an engineer who wrecked his train because a tower man had made a mistake, could not recover damages, but his passengers could. Today the Supreme Court even upholds state workmen's compensation laws and the fellow servant doctrine is obsolete.

It is not too much to say that laws affecting public health, nuisances, safety, public morals, wages, social insurance, monopolies, and zoning ordinances are declared constitutional by the Supreme Court today, despite the fact that two or three generations ago they would have been declared void because they were unconstitutional. This progress has come about without a change in a word in the respective sections of the Constitution of 1787.

The Constitution is meeting the needs of today.

Our respect for the Constitution can only be vital or significant however when we can answer the question: How? How? The Constitution is an instrument designed to be interpreted in the light in which it was written yet flexible enough to meet needs as they arise.

The Constitution assumes that what the people want is often wrong—that majority tyranny is as obnoxious as any tyranny. Yet the Constitution establishes majority rule as the basis of our government. Paradoxical as it may seem the Constitution is the safety valve from majority tyranny. Men want reform but do not know what laws are practicable.

This unique document established the means by which it could ever be vitalizing the solidarity of the American people. Interpretation by an agency set up by the Constitution makes the Constitution dynamic, and insures its flexible durability.

The most significant characteristic of the Constitution is that the Supreme Court need not function by the precedents of the dead past. The Supreme Court trails behind and will not interpret the experiences of men in the light of the Constitution until those experiences have become permanently embodied and crystallized in the consciousness and conscience of the people. The Supreme Court moves slowly so it can know what will be right ten years in the future. A precedent cannot embalm a

principle. "The present contains nothing more than the past, and what is found in the effect was already in the cause."

The Supreme Court should not be criticized for its decision in *Lochner vs. New York*. Then, neither it nor the people knew the exact trend. In due time what was not due process of law became due process of law. The will of the people, under the Constitution ultimately and without majority tyranny triumphs.

I come here tonight to ask that we as Americans in contemplating the Constitution no longer make ignorance the mother of our devotion to it. When we seek to increase interest in and respect for the Constitution, let us look not so much to the glass-covered parchment in the Library of Congress, but to the present Constitution as it is interpreted by its own servant and agent, the Supreme Court.

Our Constitution although recorded on paper is written in the hearts of the people. Our Constitution, although drawn up in the eighteenth century is interpreted in the twentieth. Our Constitution although conceived by the individualism of two centuries ago, is born and reborn in the lives of all of us today as we collectively cooperate to be servants in the service of all our fellow citizens.