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The Constitution and Current Economic Problems

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The COLLEGE *of*
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in VIRGINIA



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Problems

PATRICK J. HURLEY
Secretary of War—1929-1933

SIXTH LECTURE ON THE
CUTLER FOUNDATION

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THE CONSTITUTION AND CURRENT ECONOMIC PROBLEMS

BY PATRICK J. HURLEY

THERE is no more appropriate place for the consideration of the fundamental principles of our government than here at the College of William and Mary. The patriot sons of the Old Dominion, many of whom were schooled here, exerted an influence in the foundation of the United States government superior to that of any other group of men. Among the great Americans who were students at William and Mary were Thomas Jefferson, the "Apostle of Democracy," the disciple of States' rights and decentralization; John Marshall, the great Chief Justice who expounded the Constitution and made of it a flexible instrument which enables it to fulfill the needs of growing ideals in stability and freedom; and James Monroe, who proclaimed the Monroe Doctrine which for more than a century has been a fundamental in our nation's international relationships. The College of William and Mary is the second oldest in the United States. It was here that the chairs of law and history were first established in America. This College was the first to adopt the elective system which today prevails at all American

universities. George Wythe, a native of Virginia, a justice of the Court of Appeals, a chancellor of Virginia, a member of the Continental Congress, a signer of the Declaration of Independence, a delegate to the Constitutional Convention, was the first professor of law at William and Mary College. He was a profound student, but more than a student, he was a teacher and leader, a statesman and patriot. His instructions enabled others to render brilliant service for their fellowmen. He was able to impart to many of his pupils that clearness of mind and purity of purpose which so characterized himself. No other man has ever been the instructor of so many men whose names are among our nation's great. America will never be able to measure the full extent of the contribution made by George Wythe and William and Mary College to the fundamental principles upon which has been built that which is now called Americanism.

I have said a few words upon the College of William and Mary. May I not now turn to the State in which that College is located. The first representative government on this continent came into being with the election of the members of the House of Burgesses of Virginia in 1619, the year before the Pilgrims landed at Plymouth Rock. From that time

to the Declaration of Independence, Virginia, ably seconded by Massachusetts, was the leader in evolving in the New World the principles and the safeguards of freedom. It was a Virginian, Patrick Henry, who set the spark to the Revolution, that resulted in the establishment of the United States of America. A Virginian, Thomas Jefferson, wrote the Declaration of Independence. A Virginian, George Washington, led the colonial armies to victory and became the first President of the United States. A Virginian, James Madison, led in framing the Constitution of the United States. A Virginian, George Mason, wrote the "Fairfax Resolves" and the "Virginia Declaration of Rights," which finally became the basis for the Bill of Rights in the Constitution of many States and the United States. A Virginian, Thomas Jefferson, acquired the vast Louisiana territory for the United States. Virginians, Lewis and Clark, explored the Northwest and laid the foundation of the title of the United States to that territory. A Virginian, George Rogers Clark, conquered the Northwest territory. A Virginian, James Monroe, proclaimed the Monroe Doctrine. A Virginian, Sam Houston, liberated Texas, established a republic and finally brought Texas as a state into the Union. These facts are recounted only

to indicate that the philosophy of our government as well as the action required in the acquisition of the territory over which the government now exercises sovereignty were in large measure the achievements of the cavaliers of Virginia. These remarks upon the achievements of men who were trained at this College and of the other sons of Virginia are not intended to detract from the glorious services rendered by men of the other American Colonies in establishing and maintaining the American ideal in government, but to show the propriety of an annual discussion upon this historic ground of the Constitution of the United States.

The Constitution of the United States created a political system of self-government and laid the foundations for new relations among men. It was the culmination of the experience of a people in safeguarding the inalienable rights of individuals against the encroachments of their own government. It not only established the equality of the people before the law, it guaranteed to them equality of opportunity. It gave each individual the assurance that he could aspire to and attain that place in the community to which his character and ability entitled him. The whole system took into consideration the recognition of the inherent dig-

nity of the human being. It demanded the recognition of the eternal worth of the character of the individual. Had it stopped at this the Constitution would still have been among the most sublime documents in the world. But it went further. The wisdom that drew up the Constitution was not forgetful of the past. For more than twenty-two centuries, since the day when Socrates was compelled to take the cup of hemlock and die because he had dared to think and to boldly express his thoughts, the history of the world had been the story of a continuous battle of man for political and religious freedom. The rights of "life, liberty and the pursuit of happiness" have been secured only after long struggles. Through the ages, one by one the chains that held life and soul in bondage had been broken. Each victory had been paid for in toil and tears and blood. Now at last that the security of individual rights, freedom and justice were won, the problem was how to maintain them.

In the history of civilization democracies are not new. Athens was the finest example of citizens participating in the functions of government on a democratic basis. Athens was the jewel of Greece and Greece was the mother of art and the nurse of arms. The founders of our government were enlightened in the

statecraft of Greece. They understood the strength and the weakness of that community. They were familiar with the fundamental principles underlying the great Roman republic and fully understood from what source decay crept into the vitals of the mighty Roman Empire. They had traced the dreary and bloody record of Europe from the fall of Rome to the Renaissance. They had lived under and had revolted against the absolutism of the British Crown. They were the heirs to that indomitable spirit of freedom that permeated the Anglo-Saxon and Celtic races.

The Puritans had hardly landed in New England when they called town meetings of the citizens to discuss matters of public welfare and to pass laws for the good of the community. In the beginning while still owing allegiance to the Crown, the deliberations of the town meetings in other Colonies were on the basis of pure democracy, but the Virginia planters selected representatives to legislate for them. That method marks the beginning on this continent of a representative democracy, a republic in a democracy.

This principle of representation is one of the most vital principles of Americanism. Without it local and factional and sectional interests could never have been conciliated with the de-

sires and the ambitions and national interests of all the people. Under that system elected representatives may be compelled to carry out the will of their constituents or be turned out of office. The people through the representative system have in large measure defended themselves against the abuses that undermined the great democracies and republics of the past. The battles waged and won for liberty by Anglo-Saxon and Celt were not all on this continent. What was won in England was not to be surrendered in America. The Magna Charta, the English Habeas Corpus Act, the Bill of Rights, the Virginia Constitution, the New England Articles of Confederation, the Declaration of Independence, the Colonial Articles of Confederation, were all written in letters of unquenchable fire in the souls of the men who framed the Constitution. The new liberty had been wrung so painfully from ancient tyranny, medieval feudalism and eighteenth century autocracy, that our forefathers did not propose to deliver its control into the hands of absolutism, whether of the majority or the minority. To that end they introduced a new bulwark against autocracy by separating the executive, the legislature and the judiciary. They put into effect the bicameral system by creating two chambers of the legisla-

ture so that one chamber might serve as a check upon the other. They gave the President the veto power as a further precaution against hasty or ill considered action. After an act has passed all of these tests, if the question of its constitutionality is raised, the Supreme Court has the power to declare it inoperative if it violates the Constitution. They prescribed a procedure for changing or amending the Constitution so that the people may have full opportunity to understand the causes making a change imperative, and then it must be ratified by three-fourths of all the States. In addition to these precautions, they provided an intricate system of checks and balances throughout the government, which all together have maintained the equilibrium of constitutional government for almost a century and a half. The men who framed the Constitution were fearful of all government. They saw to it that while the Constitution made a grant of certain powers to the Federal Government, it also effected a limitation of the powers of government. They were unwilling to repose arbitrary power in any sovereign, "single or collective, abstract or concrete." It was their purpose to make certain that the people could retain the lordship over the government. Their philosophy led them to the conclusion that the

people must either govern themselves or be governed. They must be independent or subjects. They decided that the government must be the creature of the people and that it should have only such powers as the citizens may choose to delegate to it. But they also protected the government from the possibility of hasty and emotional changes. They realized that there can be little liberty unless the people can impose and maintain certain restraints on government and so limit its functions within a clearly defined sphere. For that reason they endeavored with all the wisdom and artifice at their command to protect the several States and the individual citizens against the aggressions of centralized government. They succeeded in establishing what Lincoln described as a "government of the people by the people for the people."

When the work of the Constitutional Convention had been completed, the new Constitution had to be submitted to the States for ratification. To become effective it had to be approved by at least nine of the thirteen States. Each State considered itself a complete sovereignty independent of all other States. Article VI of the Constitution provides:

"This Constitution, and the laws of the United States which shall be made

in pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

So great was the apprehension in regard to the extent of the supreme power vested in the central government by Article VI, that there arose a very formidable opposition to the adoption of the Constitution. In addition to the great influence of Washington throughout the country, it required all the eloquence and logic of Hamilton and Madison to win the conventions of their respective States for ratification. There was ever present the fear that the Federal Government endowed with such great power would encroach upon the rights of the people and of the States and would eventually become the master instead of remaining the servant of the people. Those who opposed the ratification of the Constitution envisaged the possibility of a centralized government so powerful that it would completely destroy the rights of the States and of the people and result in a despotism more absolute than the one from which the Colonies had only recently freed

themselves. Hamilton was avowedly in favor of a strong central government, but even he defined rather reasonable limits upon its power. In a letter to James Duane he said: "Congress should have complete control in all that relates to war, peace, trade and finance and to the management of foreign affairs." Jefferson said:

"Let the National Government be entrusted with the defense of the nation and its foreign and federal relations; the State governments with the civil rights, laws, police and administration of what concerns the State generally; the counties with the local concerns of the counties, dividing and subdividing these republics from the great national one down through all its subordinations."

Jefferson's view was succinctly expressed by deTocqueville when he said that "local institutions constitute the strength of free nations."

It is quite generally conceded that never before in history did men conduct a more profound discussion of the principles of free government than that which took place after the submission and prior to the ratification of the Constitution. Alexander Hamilton had proposed to the Constitutional Convention the plan for a centralized government in the nature

of an aristocratic republic. His plan was rejected by the Convention. He did, however, give his wholehearted support to the Constitution in the form in which it was finally approved by the Convention. During the discussion that preceded the ratification of the Constitution there appeared a series of seventy-seven essays entitled "The Federalist." All of these were written under nom de plumes. The authors were Hamilton, Madison and Jay. These Federalist essays gave birth to American constitutional law. They took the Constitution out of the realm of arbitrary construction and brought it within the domain of judicial determination. After the ratification of the Constitution, the question immediately arose as to the construction to be placed upon certain of its provisions. The Hamiltonians favored a liberal construction and a strong central government. The Jeffersonians favored strict construction, an adherence to States' rights and strong local governments.

It has been difficult as a result of the strains of wars, the stress of rapid peace-time developments, the rigors of economic depressions, to maintain the balance between the several States and the National Government. The same questions of construction of the Constitution that became the issue between the followers of

Hamilton and Jefferson are still the chief concern of all citizens who are interested in the future of our government. Under the powers conferred upon the Federal Government by the Constitution, those under which the greatest expansions of Federal powers have taken place, consequently those which have received the greatest amount of attention by the Courts, are the powers given Congress to "regulate commerce with foreign nations, and among the several States, and with the Indian tribes," and to make "uniform laws on the subject of bankruptcies, throughout the United States," and "to coin money, regulate the value thereof * * *," and "to establish postoffices and postroads." For the consideration of these subjects, we must turn from the heat of the political arena to the calm of judicial deliberations. Chief Justice John Marshall now takes the center of the stage in defining the powers of the National Government. As early as 1810, in the case of *Fletcher v. Peck*, 6 Cranch 87, speaking for the Supreme Court, Chief Justice Marshall said:

"Whatever respect might have been felt for the state sovereignties, it is not to be disguised that the framers of the Constitution viewed, with some apprehension, the violent acts which might grow out of the feelings of the moment;

and that the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. The restrictions on the legislative power of the States are obviously founded in this sentiment; and the Constitution of the United States contains what may be deemed a bill of rights for the people of each state."

Today we have journalists, historians, lawyers and many others who contend that we must ignore the States and that we must turn completely from the Constitution to some form of "supreme executive" to meet the exigencies of the present situation. Recently when Congress delegated to the Chief Executive certain discretionary powers to act within limits fixed by Congress, we read in the newspapers that democracy had abdicated, that Congress had conferred legislative and dictatorial powers upon the President. These statements are incorrect. The power conferred by Congress upon the President in the last tariff bill to readjust tariff rates within certain limitations, the power recently conferred upon the President to readjust salaries and wages of government employees, to readjust veteran allowances and compensa-

tion, and effect other general economies within certain defined limits, do not confer any legislative or dictatorial powers upon the President. They do not even confer continuing executive authority. On the contrary these acts are strictly within the purview of the Constitution. They do confer certain discretionary executive authority, but the discretionary power is within limits fixed by Congress. They constitute merely executive authority to the Chief Executive to carry into effect the will of Congress and are within constitutional limits. See *Field v. Clark*, 143 U. S. 649, and subsequent decisions.

The next general ground on which much has been written recently to indicate that dictatorial power must be exercised to save the democracy is in the field of banking.

In 1819, while the Bank of the United States was yet in existence, the power to create and maintain instrumentalities in aid of the Federal Government, though in conflict with the same instrumentalities created by the State, was questioned. In the same case was the question of the right of a State to tax a Federal agency operating within the State. Chief Justice John Marshall, speaking for the Supreme Court in the case of *McCulloch v. Maryland*, 4 Wheaton 316, laid down three fundamental principles:

“First, that a power to create implies a power to preserve. Second, that a power to destroy, if wielded by a different hand, is hostile to, and incompatible with these powers to create and to preserve. Third, that where this repugnancy exists, that authority which is supreme must control, not yield to that over which it is supreme.”

In the same case the Chief Justice further said:

“It is of the very essence of supremacy to remove all obstacles to its action within its own sphere * * * .”

In the case of *Veazie Bank v. Fenno*, 8 Wallace 533, it was held that

“to the same end Congress may restrain by suitable enactments the circulation as money of any notes not issued under its authority.”

The charter of the Bank of the United States expired in 1836, and its renewal was refused by the Jackson administration. No adequate provision for a national banking system was made until the National Bank Act of 1863, which was revised in 1864. The Act of 1864 did not create a single bank with branches throughout the United States, like that of the

Bank of the United States, but provided for the creation of numerous local banks, each independent of the other and operating in a single banking system under the supervision of the United States Treasury. The Supreme Court applied the doctrine of its earlier decisions to the national banks organized under the National Bank Act of 1864.

In the controversy involving the rights and powers of the States where they conflicted with the banking policy of the United States, the Supreme Court held

“that it is not competent for State legislatures to interfere, whether with hostile or friendly intentions, with the national banks or their officers in the exercise of the powers bestowed upon them by the general government.”
(*Easton v. Iowa*, 188 U. S. 220.)

After the enactment of the Federal Reserve Act on December 23, 1913 (Wilson administration), it was contended that the legislation constituted a direct invasion of the sovereignty of the States. It was argued that the States unquestionably controlled the laws of descent and the administration of estates of deceased persons; that the States had a right to create corporations and specify the qualifications and

the duties of all who may engage in the business of acting as trustees, executors or administrators, and that the Federal Congress is without constitutional authority to set up an institution within the State to act in conflict with the State agencies, regulations and laws on these local concerns. The Supreme Court held that Congress does have such power and that

“ * * * this must be, since the State may not by legislation create a condition as to a particular business which would bring about actual or potential competition with the business of the national banks, and at the same time deny the power of Congress to meet such created condition by legislation appropriate to avoid the injury which otherwise would be suffered by the national agency.” (*First National Bank v. Union Trust Co.*, 244 U. S. 416.)

This line of decisions leads to the conclusion that acting within its constitutional authority the Congress has the power to create a federal banking system as an instrumentality of the Federal government and to eliminate any competition that may obstruct or destroy it.

The constructions placed upon the Constitution by the Supreme Court show clearly that the use of the banking and currency power is

not an invasion of States' rights. It is in no sense the exercise of dictatorial authority. The wisdom or the lack of wisdom in the methods employed in the use of the power is quite outside of this discussion. The fact is the Constitutional authority exists and it may be wisely or unwisely used.

There is also a frequent outcry that the Federal Government is destroying localism by its constant interference through the Interstate Commerce Commission with intrastate commerce and state regulations.

The Supreme Court of the United States in the case of *Houston, etc., R. Co. v. United States*, 234 U. S. 342, said of this provision:

“It is the essence of this power that where it exists it dominates.”

Whenever a unity of national action is required to insure uniformity of national commerce regulations against conflicting and discriminating state legislation, the Federal authority is supreme. In the same case the Court said:

“By virtue of the comprehensive terms of the grant, the authority of Congress is at all times adequate to meet the varying exigencies that arise and to protect the national interest by

securing the freedom of interstate commercial intercourse from local control."

In the case of *Hill v. Wallace*, 259 U. S. 44, the Supreme Court held that an Act designed to regulate the conduct of the business of boards of trade through the power of taxation was unconstitutional. But the Court held in the case of *Board of Trade v. Olsen*, 262 U. S. 1, that an Act having the same object in view not through the exercise of the power of taxation but on the ground that it was intended to remove an obstruction or interference to interstate commerce was constitutional. In the latter case the Court based its conclusion on the ground that

"it finds that by manipulation they have been a constantly recurring burden and obstruction to commerce."

They could come under the control of Congress under the interstate commerce clause of the Constitution. In this field, too, we find the Federal Government extending its authority clearly within the limitations imposed upon it by the Constitution.

It was early realized that the Constitution has an inherent power of adapting itself to new conditions in a world that is forever changing.

In *Martin v. Hunter*, 1 Wheaton 326, decided in 1816, the Supreme Court through Justice Story declared:

“The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence. It could not be foreseen that new changes and modifications of power might be indispensable to effectuate the general objects of the charter; the restrictions and specifications which, at the present, might seem salutary, might, in the end, prove the overthrow of the system itself. Hence its powers are expressed in general terms, leaving to the legislature, from time to time, to adopt its own means to effectuate legitimate objects, and to mould and model the exercise of its powers, as its own wisdom and the public interests should require.”

The same thought is expressed in *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U. S. 9, where the Supreme Court declared:

“The powers thus granted are not confined to the instrumentalities of commerce, or the postal service known or in use when the Constitution was

adopted, but they keep pace with the progress of the country, and adapt themselves to the new developments of time and circumstances. They extend from the horse with its rider to the stage-coach, from the sailing vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth. They were intended for the government of the business to which they relate, at all times and under all circumstances."

They who favor a strict construction of the Constitution have rather humorously inferred that in decisions of the nature of the foregoing, the Supreme Court has followed the election returns. The Supreme Court is an agency of the people, as well as an instrument of the Constitution, and its decisions do follow the progress and the inventions and changing economic developments, and do carry into effect the will of the people as expressed by laws enacted by Congress, as far as that may be done within the limits prescribed by the Constitution.

The foregoing decisions indicate very clearly that the field still open for expansion of Federal

authority in national economics within the limits of the Constitution is even greater than all the field now occupied.

POLICE POWERS

In the beginning the great effort was to secure sufficient authority for the Federal Government. Today the movement is to extend Federal jurisdiction over local matters never contemplated by the powers granted the Federal Government by the Constitution. It is in this field that the Federal Government is in immediate danger of becoming over-centralized, top-heavy and dangerous alike to the future of the Constitution and freedom.

In 1914 the Supreme Court of the United States in the case of *Atlantic Coast Line Railroad Co. v. Goldsboro*, 232 U. S. 548, said that the police power of the State

“can neither be abdicated nor bargained away, and is inalienable even by express grant.”

The people, however, seem rather anxious to alienate the right of home rule. In 1918 the people—not the Constitution, not the government—the people wrote into the Constitution of the United States the Eighteenth Amendment. The purpose of the Amendment was

very laudable; it was intended to eliminate the age-old social, economic and political evils of the liquor traffic. But the Eighteenth Amendment is a police regulation written into the fundamental law of the land. Regardless of where we stand on the moral issue involved in prohibition or the method of regulating the liquor traffic, there are two things upon which we may all agree: first, that the Eighteenth Amendment has failed to accomplish the purpose for which it was enacted; and second, that it constitutes an invasion of the police powers of the States and as such is a departure from one of the principles upon which our government is founded. The people have now in their hands the question of the repeal of the Eighteenth Amendment.

Notwithstanding the experience with the Eighteenth Amendment, both the people and their leaders seem now to be rather eager to relinquish local control, home rule, States' rights and police powers if the law extending the jurisdiction of the Federal Government carries with it an appropriation to be expended locally. With the possible exception of some of its decisions construing portions of the Fourteenth Amendment, the Supreme Court has by a long line of decisions prevented the Federal Government from encroaching upon the police power or

any of the great and extensive powers not delegated to the central government by the Constitution. Those powers are still vested in the people and the States and are, or may be, exercised by them in local and State governments. Some of the State governments are as virile today as they have ever been. The finances of many of the States are in good condition and the State laws are enforced. The States having large centers of population are usually willing to transfer local responsibility to the Federal Government.

The lack of local consciousness, the failure of the individual to perform the duties of citizenship, the failure of States to enforce their own laws, have caused a paralysis of some of the local governments. During this period of failure to enforce local laws, racketeers in all lines, grafters, profiteers and usurers, who obey neither the dictates of common decency nor the laws of their States, are permitted to go unpunished except in rare instances when they are brought to bar for the infraction of the Federal income tax law, or some other Federal law not bearing directly upon the offense committed. Every racketeer could be stopped at the beginning of his career if local laws were enforced. The people can have the kind of government they desire. They can compel their elected repre-

sentatives to enforce the laws or to retire. If the laws are not enforced, it is the fault of the people, not of the government. In a government by the people the government will not function properly if the citizen does not perform the duties of citizenship. The government does not operate itself; it must be managed by the people whose creature it is. Because of the failure to enforce State laws, there is a demand throughout the country for a transfer of jurisdiction over stock exchanges and all transactions in securities from the States to the Federal Government. This extension of Federal jurisdiction is demanded under the commerce clause of the Constitution for the purpose of removing an obstruction to commerce. If such a law is enacted it will greatly increase bureaucracy and centralization. But it must be evident to every one that this increase of federal power is being demanded because of the failure of the States to enforce laws that are already upon their statute books.

Let us now consider the suggestions made by those who say that we should cease trying to perfect our present system of government and discard it for a system better adapted to the present period. They say that because of the seriousness of the present economic situation and the breakdown of local government that the

day of representative democracy has gone, and that for the efficient management of our highly technical civilization we need a "supreme executive" or some other form of centralized power. They who make the suggestions point to the basic changes in our economic life that many fairminded and intelligent people believe we must make to assure the continued happiness and progress of the nation.

It is true that a great many difficult economic questions confront the people today. The economic changes suggested are numerous. Some of these changes involve proposals to Congress to create a new system of taxation; to make all wealth bear its proportionate share of the tax burden; to improve the banking system so as to make banking safer for depositors; to provide a more regular flow of credit for industry, commerce and agriculture; to reduce the earning power of money; to permit the adjustment of the hours of labor to meet the increased power of production brought about by the invention of labor saving machinery; to regulate both production and distribution; to find new sources of revenue to provide income for the government and to supply money for public works to create employment; to reduce the cost of government; to assure a more equal distribution of the nation's wealth; to

provide a plan whereby the unemployed will be returned to work, thereby increasing consumption and creating better markets and prices for commodities; to provide a general economic plan for the future welfare of the people that will prevent a recurrence of the present distress. We will not here discuss the merits of any of these proposals. No right minded person will attempt to retard progress towards the attainment of social and economic justice. But we are being continually told that in order to put into effect a comprehensive economic plan we must change our system of government.

Our failure as a people to work out a sound economic plan is not due to our form of government; it is due to our incapacity as economists and to our failure to cooperate in carrying a plan into effect. The Constitution is so flexible, so readily responsive to new economic conditions, that a plan including the essential elements of the proposals made to Congress could be made operative under it. What is needed is a sound economic plan for the future, not a new political formula. Any minor changes in the Constitution, if any are necessary, need not change our system of government. There is sufficient power in the Federal Government and in the State Governments to carry into effect any and all economic laws that may be neces-

sary to meet the present situation. The danger in the present emergency is not that the central government has too little power but that it will acquire too much power, and that by the constant acquisition of power the government will one day cease to be the creature of the people and become their master.

We are certainly making basic changes in our system of economic life. But the present industrial dislocation requires treatment essentially economic and not changes in our organic law. We need an economic plan for the future that will have as much merit in its sphere as the Constitution has in its. When such an economic plan appears the Constitution will not prevent its accomplishment. Favorable public opinion will make even a defective economic plan workable. Without the support of public opinion no economic plan however perfect can succeed. If a reasonable plan is put into effect, it will eliminate its own defects in the operation if it has the support of public opinion. To make any plan work, it is essential that it have the support of a majority of the citizens who are willing to enforce the plan not solely for their own advantage but for the benefit of all the people.

Throughout this period of distress we have found an abundance everywhere of the un-

bridled vocabulary of condemnation and abuse. Instead of condemnation we should inculcate temperance in our appraisal of the efforts of those who are charged by the people with the responsibility of leadership. Remember also that in the distress so prevalent among us today is the stimulus that will bring forth the combined efforts of the people to lay a foundation for peace, prosperity and happiness in the future. The solution of the present-day problems is not to be found by discarding the experience of the people gained through a century and a half of freedom and progress. Let us search our past for our errors, acknowledging that they are our own errors and that we have gained experience in having made them, but being everlastingly grateful that we have the power in our own hands to correct them. Let us keep in mind the words of George Mason:

“By an inevitable chain of causes and effects, Providence punishes national sins by national calamities.”

Here we might well end the discussion on the Constitution in its relation to the economic problems of the day. But it may be proper for us to consider the systems of government and economics which we are invited to accept

in lieu of our own. These are the isms we are asked to accept in exchange for Americanism.

COMMUNISM

We are seriously told that a form of communism with a "supreme executive" is the next logical step in the evolution of our government. Without being given any proof of the success of that kind of government in Russia, and with all the available evidence pointing to its failure, we are asked to exchange the experience of a free people in a century and a half of achievements for a system which for the most part is untried. Then, also, there is a difference between the Russian and the American in their experience under free institutions. Before the advent of communism Russia labored under a despotism. The rule of the czar was absolute. Notwithstanding all the talk about a workers' council, communistic Russia is still a despotism where the people are forced to perform the labor assigned to them under the rule of a dictator. The Russian people were never trained in representative government regulated by law. They have never enjoyed the benefits of an all-inclusive system of education. When they overthrew one despotism it was only to become subject to another. We wish the Russian people well. They with all mankind are entitled to

America's good will. But we do not care to emulate them

FASCISM

There is a group among us who call upon us to follow the "black shirts" of Italy, or the "brown shirts" of Germany, or the "red shirts" of Russia, and sometimes just the plain "stuffed shirts." This group points to the prevailing government in Italy and tells us that this country needs a dictator after the pattern of the one now ruling there, who should control industry, regulate production and distribution, and materially reduce unemployment. We are discussing this group seriously because we have a sincere respect for the great organizing genius and the leadership of Signor Mussolini. We are aware that his rule not only saved his country from a threatened political chaos but has also brought to it an appreciable measure of stability and happiness. Yet we should not hide from ourselves the fact that Italy is under the rule of a despot, although a benevolent one. Fascism is the antithesis of Americanism. In Italy Fascism rules the people and brooks no opposition; in America the people rule themselves. The will of one man rules Italy; the will of the majority of the citizens rules the United States. Signor Mussolini controls the Italian Parliament; he controls the Cabinet and Supreme

Fascist Council; the courts cannot be said to be independent but are the instruments of his policy. In his hands are gathered the three departments of government, legislative, judicial and executive. In the United States these are separated from each other though working toward the attainment of a common end. "Whenever," wrote Judge Story in his Commentaries on the Constitution, "whenever they are all vested in one person or body of men, the government is in fact a despotism by whatever name it may be called."

But we may be answered that whatever the rule in Italy is, it is succeeding; that it has coordinated the activities of that country. As an answer to that argument we will be able to show that in spite of all its faults, and in spite of the present distress, a free government is unquestionably superior to Fascism or any other form of despotism. So long as Signor Mussolini lives, or more exactly so long as in his lifetime he retains his present vigor of mind and force of character, Italy will doubtless be subject to a wise though absolute rule. At the end of his career there must be ready a new dictator equally well equipped and fully prepared to take up the work where he leaves it. Here we touch a fatal defect of despotic government. They who have even a meager knowl-

edge of history know that in the past a wise and able ruler has often been succeeded by a vicious one, or that the death of a wise and benevolent despot has been followed by a period of bloody conflict between rival contenders. Particularly has this been true where the dictatorship was not hereditary. The history of Rome under the Empire, that is, Rome under a series of absolute despots, affords many proofs of this truth. Wishing as we do the Italian people continued peace and prosperity, we cannot see how Fascism can escape this defect of despotism. The American people do not want a dictator or the chaos that would follow any form of absolutism. They can escape these evils so long as they have the virtue and the hardihood and the public spirit to maintain their free government. Under the American system it is the people who will control their elected representatives and their government, rather than become the passive objects in the conflicts of rival contenders.

Where the institutions of a country have their foundations in liberty, the people are free to examine and discuss new measures and to express their judgment of the fitness of the measures and the ability of their chosen representatives. This is one of the ways in which a sense of individual responsibility on the part of the citizens is fostered. These groups who revert

to the idea that one man can rule a people better than they can rule themselves imply that our century and a half of democracy and general education of the masses has been a failure. The whole idea of despotism is based on a lack of confidence in the enlightening influence of education, a lack of faith in the purpose of the people, a lack of confidence in humanity. In despotic governments, it is the will of the despot and not the will of the people that rules, although the despot may frame all his measures for the good of his people. The citizens are not allowed the freedom of frankly criticising either the ruler or his policies. Open and vigorous expression of opinion is harshly suppressed. As a result the habit of enforced obedience imposed upon a people not by themselves but by their dictatorial ruler in the course of time produces a decay of public spirit and a supine apathy which no longer dares to interpose an objection to the sway of any despot no matter how vile. Neither the political institutions nor the character of the citizens of America lend themselves to any form of despotism. These considerations lead us to the conclusion that no matter how efficient Fascism, Hitlerism or communism or any other kind of despotism may be, its success must be of short duration. The lasting happiness of the people can be best secured

by a representative democracy, a "government of the people by the people for the people." When we are asked to depart from the fundamental principles of freedom, let us remember the words of Washington delivered to his countrymen in his Farewell Address:

"One method of assault may be to effect, in the forms of the Constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of governments, as of other human institutions; that experience is the surest standard, by which to test the real tendency of the existing constitution of a country."

The challenge which the American people face today is to make the rule of the people safe in the world.

We do not contend that the Constitution is perfect. It is a human document and cannot be expected to remain forever perfect. It has been amended in the past and can be amended in the future. The Constitution has been so general in its application and so salutary in its results, that it has been able to adapt itself to

the needs of the people as their own system of control through the stupendous economic changes that have taken place in all the transitions of commerce and industry from the ox-cart to the airplane and from the town crier to the radio.