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# The Crisis of the American Constitution

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The Crisis of the American  
Constitution

*An address delivered by*

WILLIAM YANDELL ELLIOTT

*at*

The College of William and Mary  
in Virginia



*S*  
TENTH LECTURE UNDER THE  
JAMES GOULD CUTLER TRUST  
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# THE CRISIS OF THE AMERICAN CONSTITUTION

DR. WILLIAM YANDELL ELLIOTT

*President Bryan, Ladies and Gentlemen:*

## **The Crisis of the American Constitution**

*An address delivered by*

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## THE CRISIS OF THE AMERICAN CONSTITUTION

DR. WILLIAM YANDELL ELLIOTT

*President Bryan, Ladies and Gentlemen:*

It is a very generous yet a difficult introduction that your President has given me. I come back with great pleasure to William and Mary, and yet I always face an introduction by President Bryan with a certain amount of trepidation—to say nothing of your camera flashlights! I am enough of a Southerner to recognize the real oratorical tradition when I hear it, and you have been just listening to it in your President's introduction. What he said to you about my remarks I can at least bear out in the analysis that he has made as to what I think the crisis of the Constitution is: It is fundamentally a crisis of American citizenship—a crisis of citizenship in a world which is very rapidly turning to those religions of the State that he has just described in such moving words.

After all, the crisis is not for us, as that of Rome is, the crisis of a dead culture. I am standing at the present moment in the middle of a College which contributed, I dare say, more than any other educational institution in the country to the formation and development of the Constitution of the United States. I don't have to recite to you the fact that no less than four of your own students took part in that convention; that the Virginia plan, which was the very basis of the whole document, proceeded from the hands of William and Mary men, notably Randolph and Wythe; nor that McClurg and Blair, through

that long session contributed a maturity of wisdom to all the discussions. The development of that document into a living Constitution at the hands of Wythe's student John Marshall is a great tribute to the tradition that William and Mary had built up even at that early time in our country. As a professor at Harvard I suppose I ought to feel some shame by the implied comparison of this record; but as a Southerner I rejoice in it. And, it is a peculiar pleasure to find that tradition is today still maintained under a leadership as inspiring as you have here in your Wythe School of Citizenship; and that Southerners in particular, and Virginians most especially, are concerned today with what is happening to the Nation and what is happening to its fundamental charter.

After all, the Constitution of the United States is a symbol of our own national life and being. We have not a king or a crown nor do we want them. George Washington might readily I think maintain that the Constitution is what he hoped it would be: "Let us raise a standard," he said to the convention over which he presided, "to which the wise and the just may repair. The event is in the hand of God." We know now from recently presented historical evidence that many members of that convention wished to make Washington a sort of uncrowned King—a strong man to restore unity to the distracted confederation. He might have turned the country in that Cromwellian direction. He put by the chance to become a Caesar, as he always put by temptations of that sort. He inaugurated a republic in the country that we now live in, dedicated to the principles that constitution stands for.

One of the great principles of the makers of our Constitution was a frequent recurrence to funda-



mentals. Let us to-day fearlessly follow their example. But first it is important in a time like this that we take some stock of our own situation in the world we live in. We are always talking about "times of crisis," but surely there was never a better justification for those words than at the present moment. I remember a toast that the French Ambassador to Washington, M. Claudel, who was a considerable poet among other things, proposed way back in the days—it seems way back, now!—in the days of the Hoover Moratorium,—when the French were hoping to get rid of the burden of the War Debt. He proposed a toast: "Here's to the little pause between the crisis and the catastrophe, for we live in it,"—and we do.

A Frenchman today must have that feeling in a sense that he has not had since the days of 1914, and he may have reason to feel that the present crisis is even more dangerous to the inner life of France than the shock and trial of the great War. An Englishman, sitting uneasily on about a fourth of the World's useful land surface,—a fifth of its total land surface perhaps, and in an empire that rules about a fourth of the World's population, that controls most of the great natural resources that lie outside the boundaries of the United States and Soviet Russia,—the lion's share as is well said,—an Englishman today, must have a deep feeling of insecurity for that empire. Perhaps that uneasiness penetrates even beneath the smug level that has been bred up by generations of mastership in the world, for he must know that his empire is being tested; and that whether or not it is to follow the courses of other empires of history will very largely depend on the decisions that are being made at this very time.

The democracies of the whole world are on the



defensive. The timing of the brutal and absolutely ruthless thrusts that are being made at one point or another by the unholy trinity of the dictatorships of the "have-not" powers is a matter that must give concern to anyone who views the future of the world and asks whether the principles to which we are dedicated as a nation can endure. Yet these are the principles for which our Constitution stands, which our daily life permits us to enjoy—*freedom of thought* in school, in university and college; that amiable kind of citizenship with its give and take, which lives and lets live, tolerating differences of opinion and arriving at settlements through political rather than violent means. It is that freedom which permits me to stand before this microphone and express sentiments that are absolutely uncensored by any one. I tell you those things are in danger in the world.

Nor is it simply that they are in danger abroad. The reason I say that they are in danger at home is this: in a time of world crisis, such as the one in which we are living, the very nature of Government undergoes a profound change, just as it does during a war, and to almost the same degree. The underlying sense of insecurity in which people exist breeds that change within every nation. We are readily accustomed to talking about recessions, depressions. We take more or less for granted the typical character of the recurrence of these periods in which want follows prosperity. It is an old story, in something of the fashion that Joseph saw in his interpretation of Pharaoh's dream, though Heaven knows we have not had the seven fat years yet! But, those things go very deep when hundreds of thousands, and hundreds of millions of people, taken over the world as a whole,



are feeling disturbed and at a loss to know how to make honest effort count.

The very nature of our industrial processes brings the necessity of organization on so large a scale as, I am convinced, we must have for the benefits of modern mass production. I don't believe we can go back,—break up at this time that large scale organization which we have built up in this country both for research and for marketing, and, for that matter, for the security of labor itself. The nostalgia for small scale business and for an agrarian simplicity is understandable. It has a romantic appeal. But it is a flight from reality in our present day world. It is frequently the case that large scale organizations have a better ability to plan and to forecast and to produce with the efficient division of labor. I don't mean that the existence of giant corporations in every branch of American industry is either essential or desirable. But I do mean that we are living in a super-industrial civilization which we can no more reject than King Canute could stop the tide from coming up. If we did reject it, we would be trampled down in the march of civilization by nations which were prepared to master that great beast, the machine, and go on.

I belonged in the years just before and after the World War to a group of youngsters who used to consider themselves poets, in the South, the Fugitive Group as they called themselves. Many of them have achieved national reputations to-day, well deserved. In later days they have been crusading against the machine in the interest of agrarianism. Books like "I'll Take My Stand" have been succeeded by "The Land of the Free," etc. I like farms—I support a farm myself—it doesn't support me; I support it. I suspect that most farming by those who prefer the agrarian



gospel today is like that. If you are able to afford it. I am convinced that farming, "gentlemanly" farming if possible, is the good way of life. But I don't believe we can reverse the hands of the clock and turn backward. We have got to learn how to master the kind of machine civilization we are living in. And that machine civilization, because it has taken away the tools of production from the individual, has created a profound sense of insecurity that can only be managed socially through social security, through collective effort, and I dare say, on a national scale.

Now that is the first thing: We face an irresistible demand, an internal demand for social security, and on a *national* scale. Where is our federalism, our indestructible union of indestructible states? The question is rhetorical but the answer is painfully plain: The states are in Washington, hat in hand, asking for more relief and getting it at the price of a more centralized, a more national system.

Yet the external aspects of this matter are even more threatening if you consider them honestly. What are the ultimate objectives of the dictatorial systems of the "have-nots" in this world? Can they be placated by concessions that will undo the Treaty of Versailles, which we are all glad to see go down the drain? Is Hitler to be satisfied, as so many of England's ruling class seem to think, with a slice, oh only a very tiny slice, of their Colonial empire? Will Mussolini, for example, remain quiet in the act of attempting to digest, rather like a boa constrictor, the somewhat huge bites of territory that he has taken to himself in Ethiopia and the ones that he undoubtedly contemplates taking in Spain and northern Africa,—whether by influence or directly so, is of little matter? Will Japan bog down in China, as many people think, and remain



bogged down and be rendered helpless? I doubt very much that this happy inertia of the sated will be the outcome, if the "have-nots" get their way. Wishful thinking would lead me to hope it, but I believe there is a profound inner cause of self destruction in these systems: Dictators who have promised their nations the moon, can never stop arming to get it. They are driven on by an inner compulsion, always farther and farther. Every concession that is given them merely whets the appetite for more, because the dictator must release the dissatisfactions that grow up under the tightening of the belt inside the nation. Instead of butter, he gives his people cannon—painful substitutes. Rearming comes out of the lowered power of consumption of his people. He must release their resentment by turning to outside enemies when he no longer has inside the scapegoat of Jews or something of that sort, and scapegoats don't last forever. In other words, the very nature of that planned system of totalitarianism leads on and on into a world of "living dangerously" in which there is no end to the road but war. Machiavelli put it and Mussolini today re-echoes it: "Expand or perish." I don't think the "or" is the proper conjunction. It should be "Expand *and* Perish" and that will mean the destruction of a great part of what we know as Western civilization in the holocaust.

Now, what is our situation in the United States, confronted by that kind of a picture? We see the weakening of all those barriers, which we have been inclined to take for granted, of our own ultimate security. That fact comes closer home every day in Latin America and in Central America and in Mexico. We are beginning to feel repercussions from the drive of these hungry powers in regions that lie well within the sphere we are accustomed to treating as being protected by the Monroe Doctrine.



And what is more than that, the contagion of the idea of dictatorships is abroad; and there *is* a contagion in ideas. When people feel profoundly insecure in their daily lives; when through inflation a middle class has been wiped out; when a nation has suffered humiliation, and wishes to forget it or to escape from it in dreams and delusions of grandeur; when it feels the futility of its own political institutions, that nation is ripe for a dictatorship. We do not believe—I do not believe, those conditions exist in the United States today. We are not leaderless in the United States; we have not gone through the wringer of inflation and I pray that we may be spared it—though one of the points I am trying to make today is that we must look into the fundamentals of our constitutional system in order to spare ourselves. Nor do I believe that we are humiliated,—on the contrary we are perhaps the cockiest people in the world—too much so I think. We agree on our superiority among ourselves and would like others to be able to see it, too. We don't know what it is to be licked in a war. If we were licked, we wouldn't know it, even then. It was only the fact that we didn't know we were licked in the War of 1812-1815 that enabled some of my own tribe to lug their long rifles down to New Orleans and lick the British after the Treaty of Peace had been signed. We don't suffer from the kind of an inferiority complex that is conditioning the action of Germany, Japan, Italy and many other nations.

And we haven't the feeling of futility about our political institutions. Perhaps when we begin to pay our bills we may feel otherwise.

But there are some aspects of these threats that come home to us from both fronts, the inner front and the outer front. When the world is re-arming,



as it is today all over the world, it means that ordinarily we get into a state of war psychosis where fear dominates every action. We haven't come to that point yet. But we are passing bills, and rightly passing bills in my judgment, in the billions of dollars, for naval defense and for armies. We are straining the resources of our system, though not yet to the point that the British and French are doing, to get ready for "the day." There is already an "M" Day Bill in Congress, a Mobilization Day Bill—rather wrongly called a bill "to take the profits out of war". This latter pious aim figures in the last part of the bill and only in terms of something "for future study." But that bill would set up something like a totalitarian state in this country. I think possibly it would have to, during a war. We did something of the same sort in a modest way during the last war. Am I wrong then in feeling that the shadow of war hangs very heavily over this nation today?

Mind you, I don't regard the Byrnes Bill for the administrative reorganization of our federal services, that has been so bitterly and, I daresay, maliciously, assailed, as in any way containing the possible threat of dictatorship. I want to put myself on record on that and come back to it. On the contrary, it is merely giving to the Executive of the United States those powers that under the Constitution he must have to execute faithfully the law, and which under the Articles of the Constitution governing the separation of powers, any President needs and must have. They are powers which President after President, as Mr. Hoover was honest enough to say the other day, has tried to get in vain from Congress, because of the nature of our pressure politics and spoils system. From Taft's time on, every President of the United States has been rebuffed.



I say I don't regard the Reorganization Bill as a threat, but I do point to you that the nations that are headed toward war are going to have to alter their forms of government in order to centralize power. A nation preparing for war, a war on poverty or a war against external enemies is like an army: there has to be staff work. The idea of a "general staff" inevitably begins to function in government under those conditions. Unless we can meet these demands under democratic, and Constitutional terms we may one day find ourselves meeting them under quite other terms. In other words, in my judgment, it is better to anticipate and to prevent this trend from getting out of hand, if we are to maintain the constitutional tradition that the men of this College attempted to establish when they put into effect in that final crisis that they were facing, the Virginia plan for *national* government that could *govern* and could *govern responsibly*.

Now, how is this to be done? What are the things that we face today in our constitutional system that are threatened—what remedies can we take?

I want to suggest that our system needs revision today first in respect to our federal units of government and second by bridging the gulf between President and Congress by means of a general election.

First of all, what is the American Constitution that I have been talking about here? Many of you may think that I mean only the document that came out of the Constitutional Convention. That document was ratified by conventions in the states after long and very brilliant and interesting debates and a rather bitter struggle, and it has been amended twenty-one times, and will be still further amended, I hope. No, I mean something more even than that. I mean the constitutional system of the United States



*as it works.* That is the true constitution of any country: the working system that has grown up about fundamental law.

There is nothing in the Constitution whatever that says the President shall be elected in the way that he is. The Electoral College has been gradually changed by usage into agents who are absolutely instructed—delegates and not men with individual discretion. You may regard that, and I do regard it, as perhaps a mistake. But it has happened. The usages of our Constitution, the practices, and there are many of them, determine what the system is and how it works.

One of the most important of those usages is the power of the judiciary in the system, which I think was intended by the men of the Constitutional Convention, to function as a protection of genuine fundamentals, but not in the extreme form of judicial censorship that it has become at times in our history. The power of judicial review was, in my judgment, and I have placed a good deal of study on that—deliberately intended, but I don't think it was ever intended that the judges should set themselves up as censors of all social policies. The early justices said that in the clearest language, in decisions of about 1795. Chase and Cushing put it very well, in terms about like this: We ought to remember that the right to declare a law unconstitutional, if it exists in our system [and it had not yet been exercised at that time] in respect to a Federal law should be exercised "only in a very clear case." That is an important self-denying ordinance which I recommend to the judiciary and which I think the judiciary is probably going to follow in times to come in this country. Subject to that reservation, I think that there is no

more important bulwark of our liberties than an independent judiciary. It is one of the things that is regularly attacked by every dictatorship in order to bring law under arbitrary control.

While I could sympathize with the distress that Mr. Roosevelt felt at the kind of decisions that the majority of the Supreme Court were giving him a year or two ago, I did not feel sympathy with the method by which he proposed to remedy them, and I think the same feeling of uneasiness about the use of a round-about method of what amounted to packing the Court, was a very sound indication of the attachment of Americans to their Constitutional system.

Now, the crisis has for the moment passed. It leaves behind it though certain questions which I should like to raise with you about the future of the judiciary. Our Constitutional System is not only what the judges say it is, but what the amending power can make it, and what usage will make it. Today I want to lay before you the suggestion that what we have to avoid is *changing our whole system just by usage—by usurpation, by the necessity of twisting a document into distortion*. We need, on the contrary, to bring to bear upon its orderly and constitutional amendment, in certain features, the best thought that this country can produce, and the same kind of effort that went into its creation a hundred and fifty years ago.

Of course there are still parts of this country that don't believe that this is a *nation* even today. Virginia, the Old Dominion, I think is no longer one of them. We have, I think throughout the South, generally speaking, accepted the fact that we are a nation. Not that the Civil War settled that for us. But our acceptance of national unity arose from a



growing conviction that has come about through our own contribution to the nation. If there is a part of the country today that is secessionist it is probably in New England, and most particularly in Vermont and Maine. (I trust they will not hear in Boston over these air waves the remarks I have just made!)

But this is a federal country in spite of being a nation, and the protection of the rights of the states and of the reality of those rights depends upon having in the working of the State governments the possibility of solving the problems that those state governments have before them. That is the first main point in the actual work of our constitutional system that I raise to discuss with you. Can we, through the existing mechanism of the states, hope to have areas adequate, politically and economically, to the burdens put upon them? Isn't it precisely the fact that those areas are *not* grouped in a way that is adequate to that purpose which is fatally transferring everything to Washington,—a tendency that I certainly feel is very dangerous. But I don't see any remedy for it as long as we are dealing with areas like the states in their present form. New England is a real area today, and it would be most useful there (I can say it here; I hope that my voice is not carried by this microphone back there), it would be most useful to have the city of Boston, for instance, dominated by a New England region rather than have the city of Boston politically dominating the politics of the Commonwealth of Massachusetts to the degree that it does. It will be most necessary, perhaps, in the future of our country to get the great metropolitan areas of this country balanced and perhaps over-balanced by back-country. But I daresay, from my backwoods Tennessee point of view, if you don't

mind, President Bryan, the great part of this country outside the few largest cities is sounder in American tradition than the metropolitan areas are ever likely to be, though New York seems to be on the up grade. In that respect, I am afraid that I share somewhat Jefferson's distrust of urbanization. I think the problem of dealing with urbanization is very largely a problem of balancing the political powers of this country in regional groups large enough to do the job. The problem isn't an acute one for you in Virginia. You have the oldest tradition of any state, perhaps, except Massachusetts, and there you will be rivaled. You have not the problems that Massachusetts has inherited because of the potato famine in Ireland almost a century ago and other things that I needn't go into.

But you are also Americans, as well as Virginians, and you recognize the fact that these problems exist, and that it may well be that the existing grouping of our Federal units is one of the large reasons why we are drifting to such a degree of centralization. Both because the cities have too much weight in the national political picture at the present time—because of a few great city machines,—and because the existing territorial areas of the states, as constituted at present, are not natural economic units, we need to consider a radical change in the basis of our federalism. Carter Glass, in drawing up the Federal Reserve System—a feat of great constitutional statesmanship that we must never forget, for which he ought to be eternally honored,—had some sort of picture like this before him—those twelve districts. This is an important matter for our study. I am not going to try here to lay down the criteria for settling the outlines of these new Federal Regions that seem necessary for a



sound federalism. The Federal Reserve Districts suggest to my mind, to a considerable degree, the need of areas that would transcend the barriers of the states sufficiently to have large enough grouping to play the role that once Massachusetts and Virginia played, and which no doubt Massachusetts and Virginia would to some degree still lead in any such regional group. We need political units comprised of regions homogeneous to some degree in culture and in their way of looking at things—that is essential in a federal country. The South, you see, splits itself up into units of this sort. You know as I do that there is a genuine difference of feeling between parts of the South that are just below the Mason-Dixon line and some that are very much below the Mason-Dixon line. I don't think I need to specify further than to say that Huey Long is a phenomenon which could not have happened in Virginia.

Now, let's take my second main point: the separation of powers in our system. We started off with a conviction about the separation of powers which was partly due to some misconception of the English system that we got through Blackstone and that he had inherited in some degree through Montesquieu,—that the English system really was one of separated powers. At the time they wrote, it was a far more genuine separation of powers than historical critics are prepared to admit. After all, George III did run a good deal of the executive power of England. In spite of what people said, in the light of later constitutional precedents, he was powerful. Our colonial experience also led us into accepting the reasoning that to separate the executive, legislative and judicial functions was to prevent them from falling into the hands of a single and therefore an arbitrary person. The presidency

was set up on an entirely separate basis from Congress. The two ends of the Avenue in Washington are significantly two *ends* of the Avenue—Pennsylvania Avenue. If you want to get them together today, how do you go about it? Well, I am afraid we must confess the fact that the separation of powers in this United States of America is bridged by “patronage” and “spending.” Am I wrong about that? I don’t think so. Sometimes there are presidents who do not feel inclined to bridge it in that way. They won’t “play ball with the boys,” and they don’t get to the first base, politically, if I may express the plain fact in that way. Mr. Hoover had that difficulty, to a degree. He didn’t have the technique that had been developed in Al Smith and in Franklin Roosevelt by dealing with state legislatures.

There is this significant fact about the history of our country which I want to call to your attention on the authority of the late Will Rogers, who was a very considerable critic of our institutions, as well as a great humorist. According to Will, there was no president after Jackson, at any rate, who managed to control his Congress throughout his entire term of office. He said the possible exception to that statement—and you may disagree with him, but you think about it pretty hard and I believe you will find Will was right—the possible exception to it, he said, was Calvin Coolidge: The reason was that if “Cal” did know what was on his own mind, he never told anybody; so Congress could not find out in order to block him.

Well, it *is* like that. Being president of the United States is like driving a balky mule. When Al Smith came up to dine with the Forty Harvard Thieves, as we were locally known—Ali Baba Smith



and the Forty Harvard Thieves—after his defeat in 1928, those of us who had signed a manifesto for him talked over with him this feature of our system that Will Rogers had commented on. I told him the story, at that time, of the negro and the ice wagon and the balky mule, which must be a classic down here—it certainly is in Tennessee—that I think profoundly illustrates the character of our political system in this respect: The separation of powers between the President and Congress. It is about Jim, who drives the ice-wagon for Mr. Hogan, the local ice-man. Jim resigns after the mule has balked in the public square in front of the court house. He calls up Mr. Hogan on the telephone to inform his boss. After a long conversation, in which Jim recounts the catastrophes which befell various helpful by-standers who thought that they could budge the mule, Jim finally gets to the point: “Yassuh, Mistah Hogan! I done tried that, too. Yassuh. I built a fiah under dat mule. Yassuh she moved, she sho moved. She moved just bout fifteen feet, Mr. Hogan, and burnt up de ice wagon!”

I want to put it to you that our experience with everything that we have tried in the way of the executive budget and the other devices for strengthening the hold of the executive on the legislature, and for getting mutual responsibility has so far resulted in that end: The legislature moves up about fifteen feet and burns up the ice wagon! I don't suggest that Governor Smith's only qualifications for the presidency were that he could drive the balky mule. Not at all. Diplomacy in getting along with the Legislature is essential under any conditions, and the Legislature has good reasons to criticize the executive and hold him to account—that is the essential part of parlia-

mentary government wherever it exists in a true form in the world today. But there must be a relationship between these two that is more organic in its responsibilities than any thing we have yet worked out if we are ever to get a civil service.

I have backed the Byrnes' Reorganization Bill and I think it is a good job. It blankets a lot of people in the civil service, and you will never get them there in any other way. I hope it will keep them in the civil service but I haven't very much confidence that it will. I don't believe that under our system any President with a change of party is ever going to forego the weapon of patronage that he has to use in order to hold his party in line. If there weren't a Mr. Farley in each party you would have to create one, Democratic or Republican. You know the nature of politics as well as I do in that respect. You can't make our administration work, under the present separation of powers, without patronage and spending.

How could you make it work? Well, I want to suggest to you at least a thought on that matter. I think, first of all, an item veto for the President is a very desirable thing. It strengthens his hands against "riders" that is, bills of an entirely different character that are attached to bills which he must accept. E. g., the Miller-Tydings Bill, which you may or may not support, but which will cost you money in preventing prices from being cut on trade-marked and copyrighted articles, was federal legislation allowing price-fixing of that sort to be sanctioned by the states which have passed such legislation. That bill was passed as a rider to the District of Columbia Appropriation Bill which Mr. Roosevelt had to sign or see the Government starve.



When we are talking about executive dictatorships, let's think a little bit about the other side of *responsibility*. What is it you are trying to get in your system? You hold the President responsible for doing things. What do you want him to do? What machinery do you equip him with to do it? Do you demand that he go to the radio and have a fireside chat and that the country react one way or another and that telegrams to Congress will register results? It is a very bad way of having a general election. Father Coughlin and others seem to use that technique to better advantage than the great and rather inarticulate masses of our people who vote only on election day. We don't—most of us—get around to sending telegrams to Congress, and it isn't, in any case, the way to settle issues of this sort. Yet today, it is the only way that we have and we have to try to work it. No doubt it is very nice for the telegraph companies. Pressure politics become characteristic of a system in which minorities really put the screws on our representatives. In that respect, ladies and gentlemen, I raise this serious question with you: Have not the institutions of our political systems developed into this type of pressure politics largely because of the separation of powers which prevents the responsibility of disciplined party control? The Senate, for instance, is a hotbed of minority and group and bloc action. It is not a majority organ or under party control. I raise the question as to whether or not that must be corrected if we are not to develop a distrust of our institutions, a feeling of futility, a sense that Congress has become a log-rolling body.

But there is the other side of the picture. You *must* protect Congress,—that's all there is to it.



As citizens you must protect Congress if it is to protect you. If you were in Congress (or I were there) you or I would have to make peace with this same kind of pressure. At the back of the trouble with our system lies the fact that we are subsidizing everybody. We are bringing to bear in government the kind of pressure that makes it impossible to have a balanced budget and a responsible system. I think that, in President Bryan's words, that's the failure of citizenship. It comes back to a fundamental that we don't think of government as a community interest, but as something like a grab-bag. How do you treat your representative in Congress? You have a good tradition in Virginia and I can exempt you from the worst of our "pork-barrel" politics. But it is far too often in every part of the country, and I can speak with some knowledge, a matter of what the Congressman or the Senator has "done for the district" that determines whether he will stay in politics. *And above all he must make no enemies.*

Now I am an *American* and I am concerned with what happens through organized pressures of groups like labor and bankers and cotton growers, and other people who run our country to some degree in terms of response to pressures, without framing policy in the "public" interest. I want to point out to you that the *public* interest is the thing which the men who created the Constitution were concerned to protect. Now, it can be protected in several different methods. It can be protected by the Court, which will hold people to the settled rules of the game, and it ought to be protected by the Court as long as the court is *enforcing* those rules and not *making* them. And I think today that the Court is in a fair way to do that. I would like to suggest that if the Court had the power



of rendering advisory opinions or speeding up its opinions, we would get a great deal more speed as well as security in our law.

In the second place, the "public interest" can be protected by an executive who has an item veto, to some degree at least. So armed, he can delete "riders" and protect his own budget. But in my judgment, that executive sooner or later has to have the right to appeal to his country as a whole. If he had the right to call a general election, he wouldn't need patronage and spending to bribe his party into line. In England, the Cabinet doesn't have patronage. They do have a balanced budget. Why? Because the Prime Minister can say to the members of his party, either we go along together or we face the country and you ask them whether they back you or me. That's democracy. Sooner or later this country has got to find some way of dealing with our political questions in order to get the public interest registered by a genuine majority under constitutional restraint. In our system the President should have the right to call such an election once during his term. If he lost it, he should lose also his veto powers. If he resigned, his successor should be selected by Congress. I am convinced that the men who wrote the Constitution in the main viewed with alarm the equal powers of the long-term and small-state Senate over money bills, which has been one of the biggest opportunities for jobbery, for pressure politics and for throwing budgets out of balance and for that kind of thing. The Senate's powers over taxing and spending should be subordinated to those of the House.

I am presenting to you what, I believe, is not the usual analysis of the troubles of our constitutional system. But I ask you, in all honesty as Americans,

to consider whether these troubles, in times and under pressures such as we now see working from within and without, don't transcend parties or personalities—whether they don't coerce any President into a line of conduct that will make him ultimately do things that will be distressful to you and to me as American citizens; or alternatively, make him lose his hold. I ask you whether we haven't a real question in our Constitution to consider, as to the nature of our system of states, given the present drift toward handing everything over to Washington. Let us organize our system better; let the citizens support it better, and above all, let us see that the changes that are made in it be made lawfully and by constitutional methods, in order that we can hand down through these difficult times the priceless heritage that the Constitution of the United States is to the American people.