1922

American Constitutional Government

Alton B. Parker

Repository Citation

Copyright 1922 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository. https://scholarship.law.wm.edu/history
AMERICAN CONSTITUTIONAL GOVERNMENT

ADDRESS

BY

JUDGE ALTON B. PARKER, LL.D.

FORMER CHIEF JUSTICE, COURT OF APPEALS OF NEW YORK

DELIVERED AT THE COLLEGE OF WILLIAM AND MARY
AT WILLIAMSBURG, VA., JANUARY 14, 1922

(PRINTED IN THE "CONGRESSIONAL RECORD" BY REQUEST OF SENATOR SAMUEL M. SHORTRIDGE OF CALIFORNIA, MAY 12, 1922)

WASHINGTON
GOVERNMENT PRINTING OFFICE
1922
ADDRESS

BY

JUDGE ALTON B. PARKER.

Mr. SHORTHIDGE, Mr. President, on January 14, 1922, Judge Alton B. Parker, former chief justice of the Court of Appeals of New York and one-time candidate for President of the United States, delivered a masterly address at the opening of the Marshall-Wythe School of Government and Citizenship at the College of William and Mary, at Williamsburg, Va. The high purpose of that school and the reasons for its establishment are very clearly set forth in this masterly address by Judge Parker. The subject matter of his address was "American Constitutional Government." It had been called to my attention as a splendid defense of our form of government, and I had intended weeks ago to present it here in the Senate in order that it might be further distributed and preserved for future days. Hon. W. W. Morrow, of California, one of the circuit judges of the ninth circuit, writes me suggesting that this scholarly and patriotic address be printed in the Record and also as a public document.

For the moment I suggest that this address be printed in the Record. Perhaps hereafter other disposition may be made of it. I ask that it be printed in the Record in the regular Record type.

The VICE PRESIDENT. Without objection, it is so ordered.

The address is as follows:

AMERICAN CONSTITUTIONAL GOVERNMENT.

[By Alton B. Parker, LL. D., former chief justice, Court of Appeals of New York.]

The Federal Constitution, the pride of every intelligent and patriotic American, and which Gladstone referred to as the greatest work ever struck off at a given time by the brain and purpose of man, had safe deliverance from the Philadelphia Convention of 1787. Over that convention the greatest American from the beginning of government to this day, George Washington, of Virginia, at one time a student of this college and later its chancellor, presided.

The Constitution was not popular with the majority of the people at its birth. Indeed, the Articles of Confederation, which constituted whatever of Federal Government there was in existence—a helpless apology for a government, which could not compel from any source the raising of money to support itself or pay the national debt—were in greater favor with the people.
than the proposed new Federal Government, which was given all needed power, as 134 years of experience under it demonstrates. The people, however, were suspicious of the Constitution before they ever saw it. For three months and a half the convention sat with locked doors, James Madison, afterwards President, kept the Journal, but agreeably to the wishes of the delegates it was not published until after his death, which occurred about 50 years later. Moreover, the resolution of Congress providing for a convention on the second Monday of May, 1787, recited that it was "for the sole and express purpose of revising the Articles of Confederation," whereas the convention in fact reported an entirely different plan of government, a government which could enforce the powers conferred upon it by the Constitution, whether the people of some State disliked the exercise of the power or not. That was alarming to the majority of the people of many, if not all, of the States that had been accustomed to raise moneys for Federal uses or not, as they chose, and quite frequently, it may be said, they did not choose. All that the Continental Congress could do was to make requisition for funds upon the thirteen members of the confederacy in proportion to the assessed value of their real estate, for it was without power to enforce these requisitions. Nor were these requisitions responded to as they should have been during the War of the Revolution, when the people of the States were struggling to secure their liberty. One of the results was that the troops who were fighting for the freedom of the country were poorly fed, ill clothed, and rarely paid the trilling compensation which was promised them. The shabby treatment of the Army was very hard for General Washington to bear, who understood right well what their loyalty to him as well as to the cause induced them to suffer and still fight on.

The inability to finance the Government created by the Articles of Confederation was not the only illustration of its impotence to safeguard the interests of all the people. Most of the States issued at will paper currency, and the brokers and merchants of cities in other States charged such discount as they chose in receiving it for goods. The time came when the bills thus issued would be received, if at all, in other States at a very small percentage of their face value. In 1781, according to Jefferson, notes issued by Congress "fell to 1,000 for 1." The debts of the States and of the Confederation seemed large in that day, and, coupled with the chaotic financial condition, plus the indebtedness of individuals at home and abroad, led to demands by large numbers of the people for a repudiation of all debts, public and private. Moreover, the States passed tariff laws against one another as well as against foreign nations, and indeed, so far as commerce was concerned, each State treated the others as foreign nations.

It may be said in passing that the selfish spirit of that day, which prompted the people of one State to put up bars against the people of other States, still exists. As I write, there lies before me a paper of to-day's issue, referring to two contemporaneous decisions of the Supreme Court of the United States. In the one the transportation of oil through an underground pipe line was taxed by West Virginia as a "privilege tax."
thus attempting to impose a burden upon interstate commerce in oil and in gas going into other States, and for that reason it was held to be invalid under the interstate commerce clause of the Constitution. In the other a milling corporation made a contract with a citizen of Kentucky which he refused to perform. Being sued, his defense was that the milling company had not registered in Kentucky as required by the statute of that State, hence it could not sue the Kentuckian. The Kentucky court sustained his contention, but the Supreme Court of the United States reversed the judgment of the State court, holding in effect that the transaction was one in interstate commerce and the State statute as applied to it was void. Before the Federal Constitution came into existence, however, there was no redress. Now, the Federal courts can relieve the citizens of other States from attempted wrongful exactions by the people of sister States.

Fortunately, in the condition of public demoralization tending in the direction of dishonor and even anarchy in the year 1787, the 55 men who had been chosen to represent the several States assembled in Independence Hall. It was a wonderful body of men. Never since that day has a body of like numbers been their superiors in ability, courage, industry, and patriotism. I wish the occasion permitted a reference to each of them, and especially here where it would be most appropriate to speak of them. The convention adjourned on the 17th of September, 1787, and a draft of the new Constitution which it had created—the governmental masterpiece of the ages—was transmitted with a letter from Washington, the president of the convention, to the Continental Congress. Strong opposition was made to it by several of the members of the Continental Congress, but it was soon overborne, and eight days later Congress resolved that the new Constitution, together with a letter from Washington, should be transmitted to the several legislatures in order that it might be submitted to a convention of delegates in each State chosen by the people thereof in conformity to the resolves of the convention.

Immediately there were born two parties, one supporting, the other opposing the adoption of the new Constitution by the conventions of the several States, and a fierce struggle was waged in several of the States, with brilliant men for the leaders of the antagonistic parties. Those opposing attacked the convention for holding its sessions in secret. Even the mighty press of that day was not permitted to have representatives present. Moreover, the members of the convention and each of them obligated themselves not to tell anyone what was going on within Independence Hall; and what is more, no one of them ever did tell. The question up for decision by the several State conventions, to be called after the Constitution was reported, was whether the proposed form of government was sound and therefore should be adopted—not who planned it, nor even how the votes stood in the first instance on the several propositions. Nevertheless, it is a fact that many of the demagogic orators of that day successfully aroused the passions of many of the people against the convention and all its works, because the secrecy of the deliberations was assumed.
to be due to an attempt to wrong the people and rob the States of their sovereignty.

The zeal of certain members of the Legislature of Pennsylvania in introducing a resolution for the election of delegates to a State convention to ratify the proposed Constitution before the Continental Congress had passed upon it, and thereafter seizing hostile absentee members and bringing them by force to the State House, thus creating a quorum, served, with the aid of eloquent debaters, to arouse public indignation and increase the popular tide which was running against the new plan of government. Nevertheless, the convention was called, and Pennsylvania ratified the Constitution on the 12th day of December, the State of Delaware having ratified six days earlier. New Jersey followed with ratification on the 18th, Georgia on the 2d day of January, 1788, and Connecticut one week later. The Massachusetts convention came next, and the outcome was very much feared by the constitutionalists, as those were called who favored the adoption of the Constitution. But those in charge of the effort to ratify comprised the strongest and most highly cultivated men of the State and they displayed tact throughout. One bit of evidence of that fact is to be found in the election of John Hancock, one of the most popular signers of the Declaration of Independence, for the presiding officer of the convention. And yet, out of 355 votes in the convention, the majority in favor of ratification was only 19. New Hampshire came next, and the constitutionists, fearing the outcome, secured an adjournment until June.

Virginia's convention met June 2. No State was represented in its convention by so many delegates who had already achieved high station in the public service, nor by an equal number of delegates who were to serve the people in exalted positions in the future. But let Senator Beveridge speak of them, as he does in his masterly work entitled "The Life of John Marshall" (p. 322): "While the defense of the Constitution had been very able in Pennsylvania and Massachusetts, and later in New York was to be most brilliant, the attack upon it in the Virginia convention was nowhere equalled or approached in power, learning, and dignity. Extravagant as the assertion appears, it nevertheless is true that the Virginia contest was the only real debate over the whole Constitution. It far surpassed, especially in presenting the reasons against the Constitution, the discussion in the Federal convention itself, in weight of argument and attractiveness of presentation, as well as in the ability and distinction of the debaters."

Virginia was in that day the greatest of the States. She had one-fifth of the population of all the States and at least one-fifth of the wealth. Moreover, only 18 years before, her house of burgesses had passed an act prohibiting slavery, which failed to become a law only because of King George's direction to the colonial governor to withhold his signature from the enactment, which was obeyed. The letter of protest to the King from the house of burgesses was a brilliant paper, which at the same time bore a sad prophecy of that which later happened. I quote a single sentence from it: "We are sensible that some of Your Majesty's subjects in Great Britain may reap emolu-
ments from this sort of traffic; but when we consider that it greatly retards the settlement of the colonies with more useful inhabitants, and may in time have the most destructive influence, we presume to hope that the interest of a few will be disregarded when placed in competition with the security and happiness of such numbers of Your Majesty's dutiful and loyal subjects." That letter in its entirety should be known to all men in our beloved country, to the end that they may realize that slavery in that State was not due to the majority of Virginians but to the King and the profiteers of that day, who were not at all different from our war profiteers.

Virginia's son, Thomas Jefferson, wrote the Declaration of Independence, and in it, as he first presented it to the convention, there was a stinging indictment of the King for enforcing slavery upon this country. That indictment was not accepted by the convention, and it was the only change of moment it made in the declaration as he proposed it. Jefferson was later to become governor of Virginia, minister to France, Vice President of the United States, and President for two terms. Another of Virginia's sons, George Washington, had been commander in chief of our armies. His great ability and popularity, plus the universal confidence in his ability to lead, commanded his selection as chairman of the Philadelphia convention. He was not a member of the Virginia convention chosen to pass upon the Constitution, for it was his act, in common with his associates, that was about to be considered by that convention. But his striking influence was there, for he had not hesitated to let people know how vital it was in his judgment that the new national government should be ratified by the several conventions.

In Virginia, as elsewhere, there were strong leaders of men and able debaters who were opposed to the new plan of government, and in considerable numbers they were present at the Virginia convention, for both parties strove with might and main to obtain mastery there. Let Senator Beveridge speak of the strength, ability, and character of members of the convention and their leaders. He said: "In Virginia's convention the array of ability, distinction, and character on both sides was notably brilliant and impressive. The strongest debaters in the land were there, the most powerful orators, and some of the most scholarly statesmen. Seldom in any land or age has so gifted and accomplished a group of men contended in argument and discussion at one time and place. And yet reasoning and eloquence were not the only or even the principal weapons used by those giant adversaries." (Vol. I, p. 356.)

Patrick Henry, with his great eloquence, known to every schoolboy of the land from that day to this, was the leader in the mighty struggle against ratification. Edmund Randolph, then the governor of Virginia and afterwards President Washington's first Attorney General, a most popular man and an eloquent debater, was the flower of the speaking force favoring ratification. Chancellor Edmund Pendleton was chosen president of the convention and George Wythe, the first great teacher of law in this country, was made chairman of the committee of the whole. He, like many others in that convention of giants, was an alumnus of William and Mary, later her great law teacher and one-time chancellor of Virginia. James Mad-
son, afterwards President of the United States, took a prominent part in the debate and in support of the Constitution. John Marshall was there, only 32 years of age, a former student and alumnus of the same college, and little dreaming that he was to be the greatest expounder of all time of the Constitution he was working to ratify, or that the thousands of great lawyers of this day, looking back over more than a century and a quarter, would all agree that his service to the country as Chief Justice of the Supreme Court of the United States has not been equalled by any other member of that wonderful court, of which every American citizen is justly proud. His participation in the debate came toward the close of the convention. But it was timely and, as we who have read his opinions would naturally expect, it was a clear and strong presentation of the merits of the proposed new plan of government. Indeed, his participation was especially strong on the judiciary feature.

But enough of the personnel of the convention, although it was so rich in master minds and the debate so strong on each side that it seems almost unfair not to mention all of the participants. The necessary brevity of this address makes that impossible. I should say in passing, however, that the constitutionalist leaders from other States, such as Hamilton, of New York, King, of Massachusetts, and others who believed that Virginia would settle the fate of the Constitution, were making appeals to their Virginia friends to save the day. And they did, but only by the narrow margin of 10 votes out of 168. Hamilton's assurance that a constitutionalist victory in Virginia would secure the adoption of the Constitution proved to be right. His brilliant arguments in that behalf were most persuasive in the New York convention, which gave a substantial majority in favor of the adoption of the Constitution.

The Continental Congress provided that presidential electors should be chosen the first Wednesday in January, 1789, and that the electors should meet and cast their votes for President on the first Wednesday in February, and that the Senate and House should assemble on the first Wednesday in March, which was in that year the 4th day of the month. Hence, Congress fixed upon the 4th of March for the beginning of each new administration thereafter.

The counting of the electoral votes took place on the 6th day of April, and each and every one of them was cast for George Washington, of Virginia. He wisely selected two great men of widely different political views to be the leaders of his Cabinet—Jefferson for Secretary of State and Hamilton for Secretary of the Treasury. The inauguration took place on the 30th day of April in Federal Hall, at the corner of Wall and Nassau Streets, in New York City. The oath was administered by Chancellor Livingston, who, at the conclusion, shouted, "Long live George Washington, President of the United States!" Answering shouts came from all the vast assemblage. So, after a mighty travail, the National Government was born, amidst the execrations of the great uninformed majority of the people and the enthusiastic plaudits of the wiser minority.

No one, not even the wisest of the brilliant leaders among the constitutionalists, had the vision to see that before the years should pass away a fierce war would be fought between two sections of the country which should decide once for all
that ours is a Union of States, one and inseparable; that the 13 States would be increased to 48; that our territory would be broadened so as to extend from the Atlantic to the Pacific and from the Great Lakes on the north to the Gulf of Mexico on the south; that the population of three and one-half millions would grow to over 100,000,000; that the wealth of the Nation at the outbreak of the World War in 1914 would exceed by far that of Great Britain and Germany put together; that we should enter that World War, raising 4,000,000 of troops, sending 2,000,000 of them across the ocean to fight Germany on French soil before the war was ended; that we should lend our allies in the war about ten and one-half billions of dollars in order to enable them successfully to prosecute the war; that during the war we should have a President who thought he saw at the close of the war an opportunity to bind the nations of the world together in a covenant to keep the peace of the world; that into that league, after it was drafted, would enter all the great States of the world with the exception of Russia, Germany, Mexico, and the United States, the Senate of the latter refusing to follow the President’s leadership in that respect; further, that in this year of our Lord 1922 there would be gathered in our Capital City of Washington, upon the invitation of his successor President, delegates from several foreign States to consider ways and means of-lightening the overpowering burdens of the people of the world by halting the building of warships of various kinds and striving incidentally for the ultimate peace of the world; nor that all the world would look longingly on this unique assemblage with hopeful hearts and prayerful lips. All that, and much more, we of this day know has happened. To the more our President hopes may be accomplished in the near future the people say “Amen,” regardless of differing political beliefs and the less kindly treatment accorded by some people to his immediate predecessor, for, without regard to party, the people press on and on with him toward that day when international differences shall be settled as peacefully as are the differences between man and man in countries of high civilization.

Lord Bryce, at one time Great Britain’s ambassador to the United States, and at all times our friend, as we wore all his friends, nearly a century after the creation of the National Government, in his masterful work “The American Commonwealth,” paid this tribute to the Federal Judiciary: “Few American institutions are better worth studying than this intricate judicial machinery, few deserve more admiration for the smoothness of their working, few have more contributed to the peace and well-being of the country.” One of the serious objections made in several of the State conventions called to determine whether the requisite number of States would ratify the proposed Constitution was that it did not require the National Government to protect the people in the enjoyment of the great principles of English liberty, which had cost the people of England a struggle of nearly 500 years to secure. About 91 per cent of the population of the States were descended from Great Britain, and they treasured those principles of liberty and regarded them as essential to the comfort and happiness of the people. In their several State constitutions, therefore, the people had undertaken to protect themselves and those who should
come after them in the enjoyment of those principles of liberty, together with the benefits of the English common law. To that end those States, and each subsequent State with one exception as it has come into the Union, have, through their several constitutions, made the common law of England the law of the State, subject to amendment by statute.

In the course of debate the assurance was given by more than one of the great leaders supporting the effort to adopt the proposed Constitution that appropriate amendments to accomplish that result should be promptly submitted to the people. At the very first session of Congress, in 1789, in pursuance of that promise, 12 proposed articles of amendment to the Constitution were submitted to the State legislatures by appropriate resolution of Congress. Only 10 of them were ratified by the requisite number of States. Thus was the fear entertained by many that the National Government might not regard itself as bound to follow the wishes of the people as expressed in their several State constitutions put at rest.

There were no precedents for the State and Federal Governments created. Each of the States had its own constitution, made it own laws, and provided for their due execution. Its powers within its boundaries were only limited by the new Federal Constitution. Should a State attempt to trespass upon the rights and powers which the States accorded to the Federal Government when they adopted the Constitution, the latter possessed the power to terminate the trespass, and exercised it.

The theory of the constitutional form of government which the fathers—of whom we are justly proud—created was that the National Constitution was created by the people and can be changed only by the people; that within that instrument must be found all the powers that may be exercised by it, until and unless the people shall grant to that Government additional powers. And from time to time, since the adoption of the first 10 amendments, other amendments to the Constitution have been made, conferring powers upon the National Government which were not granted in the beginning. It is quite likely that other amendments may be made in the future, giving to the Federal Government still greater powers than it possesses to-day. But those powers can only be acquired by the Federal Government through the method the people have provided, which method finally results in having three-fourths of the States ratify the proposed amendment to the Constitution, either by the legislatures of such States or by a convention chosen by the people of those States.

But there are those in these later days who advocate the breaking down of the safeguards which the people secured by their constitutions. Some of them would strip the owners of property, secured by years and sometimes by generations of hard work, and divide it as the Soviet Government in Russia has attempted to do. One result of an effective attempt to take away from those who live economically, work hard, earn, and save, and divide it among people who do none of these things, is to be found in the starving millions in Russia, to whom we are sending free many millions of dollars' worth of food to save their lives. But that effort to serve the Russian people does not alter the ambition of the Soviet Government and of the hordes of sympathetic Russians who have come to this country for the
purpose of helping to overthrow the best Government on earth, from continuing their efforts. Nor does the fact of the great suffering and threatened death of many millions restrain the longings of those vast aggregations of enemies of work from seeking that which, according to their philosophy, is their proportionate share of the property, real and personal, of the world. A government which seeks to educate all of the youth of its country, stimulate all the people to work, and encourages thrift, is anathema to them.

As people of this class have been coming to us in large numbers from nearly every quarter of the globe, we must take up the task of educating all classes of our vast population as that they shall fully understand the importance of maintaining in its integrity our constitutional plan of government. They should be taught in the first instance why it was that the people in the formative period of our Government were bound to have, and did at last secure, a Government which the people could control despite their legislatures, whether representing the States or the Federal Government. Vast powers are given to the executive, the legislative, and the judicial departments of the Government, but not all of the power possessed by the people, by any means. In that fact rests the ability of the people to hold in check each of the several departments of government which might on occasion wish to have it otherwise. Occasionally the legislative department of the State or Federal Government passes an act which upon its very face defies the Constitution which the people created and under which the legislative department of government acquires all the power it possesses. This has been done so often as to demonstrate that the legislative bodies can not always be trusted to obey the people's Constitution in times of popular stress. And, of course, at the same time it is proved that the plan of the fathers in saying in effect through a rigid Constitution, "Thus far and no farther can you go," is absolutely essential to the maintenance of our form of government.

Nevertheless in this time of selfishness, of agitation, and loose thinking, there are those who seek acclaim through a denunciation of the courts for judicially declaring that certain statutes offend against the people's Constitution. In other words, the courts say in such decisions that the legislative body has attempted to exercise a power denied to it by the people through their Constitution. Addresses have recently been made from purely selfish purposes with a view of creating the impression in the public mind that the courts have in the past and without warrant seized this power. The authors assert that such a thing as a judgment of a court declaring an act void was unknown in Great Britain, from whence came our knowledge of the common law and of equity jurisprudence. But, as Lord Bryce points out with great clearness in his "American Commonwealth," the British constitution is not to be compared with ours. He says: "What are called in England constitutional statutes, such as Magna Charta, the Bill of Rights, the Act of Settlement, the Acts of Union with Scotland and Ireland, are mere ordinary laws, which could be repealed by Parliament at any moment in exactly the same way as it can repeal a highway act or lower the duty on tobacco."
Our National Constitution, on the contrary, was not created by Congress or by any legislative body, nor has Congress the power to amend or change a single word of it or to render its powers ineffective by either direct or indirect methods. A proposed amendment can only become effective to change the Constitution by the affirmative action of three-fourths of all the States.

The famous lawyers who drafted our Constitutions, State and National, knew that attempts by inferior magistrates to adjudicate upon matters over which authority had not been granted to them by statute were void, and if action was taken to enforce them, the courts would refuse their assistance to that end, because such adjudications, being without authority, were invalid. Again, municipal bodies having certain powers granted them by Parliament to enact local rules and regulations sometimes extended their attempts at making rules and regulations beyond the authority conferred upon them by the laws of Parliament, and they were in turn void, and so the courts held whenever attempt was made to enforce them against the protest of the citizen affected.

Such holdings were, as Lord Bryce points out, made by the courts in England, and the decisions of the courts there were followed here in the colonial days. Now, our acts of Congress are inferior in authority to that of the Constitution, and hence the draftsmen of the Constitution, as well as the people generally, knew that under the practice in England an act of Congress offending against a superior law would be void, and they further knew that in England it was the courts that held them to be invalid and unenforceable.

This general subject is very admirably discussed by William M. Kellogg in his recently published book, "The Relation of the Judiciary to the Constitution." It appears from the instances which he cites that between the time of the adoption of the State constitutions and the National Constitution it was generally assumed that an enactment which violated the State constitution was not only void but that it was the duty of the courts in a proper case so to adjudicate. Among the cases was one in which Judge Wythe, chairman of the committee of the whole of the Virginia convention, which ratified the Federal Constitution (and whose name is to be coupled with that of Chief Justice Marshall in founding the chair of government in this college), was a member of the court which considered a Virginia statute of 1775, which, it was claimed, though not so held by the court, infringed upon the State constitution of Virginia. Several members of the court announced their views upon the general question and were in agreement as to the power of the court and duty to hold a statute unconstitutional in a proper case. But Judge Wythe said in his opinion, among other things: "Nay, more, if the whole legislature, an event to be deprecated, did attempt to overleap the bounds prescribed to them by the people, I, in administering the public justice of the country, will meet the united powers at my seat in this tribunal, and, pointing to the Constitution, will say to them, 'Here is the limit of your authority, and hither shall you go, but no further!'"

After the close of the Revolutionary War States unmindful of the Central Government passed laws which offended against
treaties with foreign nations. Countries thus wronged, and nearly all of them were, made protest which was Indeed alarming, so much so as to lead Madison to say in the convention which drafted our National Constitution that unless it could be prevented it must involve us in the calamities of foreign wars. This situation contributed, doubtless, toward leading many of the strong men of the country to consider the method of getting rid in the future of these unfortunate State laws which were being passed without paying any heed to the Central Government or to the other State governments. Naturally, the fact that the judiciary was the instrument used in England to get rid of unauthorized acts of inferior municipal bodies and magistrates contributed in no small degree toward the plan ultimately adopted of making a central or national Constitution which should be the supreme law of the Nation with the executive, legislative, and Judicial departments of government in subordination thereto. Following the precedents in England and in this country, so far as the State constitutions are concerned, there would devolve upon the judiciary the duty of declaring acts hostile to the commands of the Constitution, whether executive or legislative, to be void and of no effect.

In passing, let me say that the first decision of the Supreme Court of the United States holding an act of Congress to be unconstitutional was in Marbury v. Madison, although statements to the contrary by careful students may be found. The actual decision in that case is correctly stated in the syllabus as follows: "Congress have not power to give original jurisdiction to the Supreme Court in other cases than those described in the Constitution. An act of Congress repugnant to the Constitution can not become a law." It will thus be seen that the first decision of the Supreme Court of the United States declaring a statute unconstitutional concerned one which undertook to confer upon that court a larger original jurisdiction than it was authorized to enjoy by the language of the Constitution. Hence the effect of its decision was to refuse to exercise authority which the Congress without constitutional permit undertook to confer upon it. That opinion was written by a man who will be known as "the great Chief Justice Marshall, the expounder of the Constitution," as long as our Government shall live. It is fit that the name of the foremost jurist in all our history shall stand at the head of the chair of governmental history in this college. It is most appropriate also that the name of another of William and Mary's students and jurists, the first great law teacher in this country, Judge Wythe, should be connected with that of Marshall in the naming of the chair.

The fact that assaults are being made upon the judiciary for deciding, as they are compelled to do now and then, that a statute is void because it violates either a State or the Federal Constitution, by an element of our population who are without roots in the revolutionary days and the formative period of our Government, makes it necessary that the colleges, and even the high schools, shall teach the youth of our land both to know and to cherish the history which inspired the fathers to build the most wonderful Government ever created by man—a Government of the people, by the people, and for the people. Such a Government, for continued success, must depend upon an educated electorate, who, because of their trained minds, can not