Know Your Constitution

by Bruce R. McConkie. This Article was serialized in 20 segments which appeared on the editorial page (page 4) of The Deseret News, 19 March 1945 through 10 April 1945.

1. The Unknown Constitution

The Constitution of the United States of America is the document nobody knows. Like the Bible, all Americans make reference to it, and some profess to revere it, but few read it. Fewer still understand the written words and appreciate the effect of its provisions upon their daily lives and interests.

How long has it been since you read the Constitution? Have you studied it with a view to understanding the effect it has on your daily acts? Did you know that it was the supreme law of the land, and that by it you are guaranteed the right to life, to liberty, and to property?

This is the first of a series of articles designed (1) to renew our knowledge of that document. (2) to assist us in gaining a healthy reverence for the document itself and for the rights and privileges which it guarantees, and (3) to prepare us to maintain those rights and privileges against all subversive influences however subtle.

From time to time an idea gets out into the political field to the effect that the Constitution of the United States is an anachronism, a mass of dry bones, an instrument of government adapted to a horse and buggy age.

Some of our politicians and would-be politicians are preaching that our form of government, is obsolete and that it should be replaced by a planned economy, and that the restraints of the Constitution are not practical in a modern industrial and complex civilization. They profess to admit that this form of government may have sufficed for thirteen sparsely settled colonies on the Atlantic coast but claim that it is entirely out of step with the progress of an enlightened industrial age.

In recent years recurring attempts have been made to override many of the time tested constitutional restraints with what seemed to be the will of the people for the moment. To accomplish this end. demagogues have affirmed that this basic law of the land is no longer so wholly essential as it has previously been in guaranteeing our rights and that humanitarianism and social betterment require the disregarding of some of its precepts.

To champion principles more divergent from fundamental political truth and verity would be difficult to do. To disregard the constitutional rights guaranteed in that document is to trample under foot the cumulative experience of over 900 years of the development of the common law. It is to suppose that the rights and freedoms for which Englishmen have been fighting and dying since the days of William the Conqueror have not been worth the sacrifice.

The Constitution is the very foundation and substance of the freedom of all men of this nation, and it is as needful, or more needful that its precepts be kept alive today than at any other time in the history of man's struggle for freedom. Freedom is dearly bought, but easily sold.

The study of the Constitution is the study of the rights of free men, and of the development of the liberties of the people. The Constitution is a code of the people's liberties; it came into existence by the sovereign will of the people, and is so ordered that it cannot go out of existence except by the will of the people, or at least as a result of their indifference and acquiescence.

These rights did not spring spontaneously into existence in 1787 when the Founding Fathers sat in convention in Philadelphia; they had been brought and paid for by the blood of one revolution in the colonies, and several in the mother country. If they are to be lost in our time, it will be because the descendants of the free no longer hear the cry of the blood spilled in freedom's cause crying from the ground. But they need no be lost if the valor will gained them can be found to defend them. If our freedoms should be load the lesson of history is that to regain them would require again the blood and toil and struggle by which they were made secure by our fathers.

The political and civil salvation of the United States lies in maintaining those rights and privileges and freedoms guaranteed by the Constitution. A knowledge of that document is essential to a decent preparation to a decent preparation of the ability to preserve those freedoms.

"Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government." (Constitution of Utah).

2. The Convention Which Framed It

The convention which produced the Constitution of the United States of America did so without the prior approval or authorization of the people of the country, or of the state legislatures which had selected the delegates to the convention, or of the Continental Congress which had called the convention.

The 55 men who assembled in Philadelphia beginning on the 14th day of May in 1787 had been selected to "revise the Articles of Confederation." It was immediately apparent to them that no lasting good would accrue from their labors unless they disregarded their instructions, scrapped any thought of amending or changing the existing weak confederate government, and launched boldly forth on an entirely new political theory.

This they did. In secret, star-chamber sessions, where no records were kept of the voting on any propositions, and with armed sentries at the doors they proceeded to lay aside the Articles of Confederation, and introduce the various plans calling for an entirely new constitutional government.

They frankly determined that "a record of the opinions of the members would be an obstacle to a change," and determined to keep no such record. However, both William Jackson, the secretary of the convention, and James Madison, one of the delegates, kept accurate and extensive minutes of all the discussions and debates.

Their proceedings were not revealed to the public nor divulged to the press. Early in the convention they adopted a resolution forbidding the "licentious" publication of the proceedings. During the entire period of their sessions they were completely free from public clamor or the influence of pressure groups. There was no lobbying and no persuasion other than that of reason and debate.

It is probable that there has never been in the history of nations a convention which proceeded with more dignity than this one. No single delegate ever arose to filibuster. Offensive expressions were not employed. All the debates and discussions, though often heated and emphatic, were sincere and dignified.

The rules of the convention were strict. Every delegate was expected to give his undivided attention to the discussions. The reading of newspapers or books was forbidden when any delegate was speaking, and no person was permitted to pass in front of the chairman while another delegate was speaking. The delegates sat in a semicircle three rows deep and Washington as chairman sat on a platform raised about six inches from the floor.

Each delegate was allowed to speak on every subject arising for discussion. But no delegate was allowed to speak a second time on the same subject until every other delegate desiring to speak on that subject had spoken or had had the opportunity to speak on it.

Those who have visited the senate and the house of representatives in solemn assembly in our nation's capital will recognize no similarity between this description and the usual proceedings in those august bodies.

The convention met pursuant to the call of the Continental Congress on the 14th of May in 1787, but on that day only 28 delegates had arrived and only nine of the states were represented. It was not until the 25th of May that sufficient delegates had arrived and

presented their credentials to constitute a quorum which could proceed to do business. new Hampshire did not send her delegates until July, and Rhode Island was never represented.

Of the 55 delegates who reported fewer than 20 shouldered the burden of the labor, although the average attendance is said to have been 73 per cent. Thirteen of the delegates became disheartened and left the convention prior to the 17th of September when the document was finally finished and signed by 39 of those who had endured to the end. Only 42 had attended the sessions with any degree of regularity.

Between the 25th of May and the 17th of September the delegates struggled through the 79 arduous work days of seven hours each exclusive of caucuses and committee meetings. To an individual whose soul was not imbued with a desire to perpetuate and make sure upon the earth those principles of freedom for which the revolution had been fought. the debates and discussions would have seemed interminable. It has been calculated that Gouverneur Morris made 173 speeches, Wilson 168, Madison 161, Sherman 138, Mason 136, and Gerry 119. George Washington delivered only one.

The debates and discussions in which they engaged have seldom if ever been equalled or approached. The document which they produced bears lasting testimony to their wisdom and inspiration. It was worth then all the labor and sacrifice required to create it. It is worth now all the blood and gold that may be necessary to re-establish its worth and perpetuate for free men the freedoms it guarantees.

3. The Men Who Made It

Only 39 of the 62 persons elected to the Constitutional Convention approved and signed this greatest of all political documents.

Seven of those elected did not consider the assignment of sufficient importance to even bother to attend the convention, and of the 55 who reported at one time or another, only 42 exhibited the interest to remain to the end of the deliberations. Three of these refused to sign and the remaining 39 gained immortality by subscribing their names to this peerless document.

The men who actively participated in the work of framing the Constitution were the most eminent, the most trained, and the most competent group of statesmen that were ever assembled under one roof at one time in the know history of the world.

They were masters of the common law of England; they loved freedom as few men have, and their devotion had been tried in the furnace of eight long years of revolution. Against overwhelming odds they had been weighed in the balances and not found wanting. In the four years between the peace of 1783 and the Convention of 1787 they had struggled with the inefficiency and impotency of the Confederacy, had been subjected to a serious postwar inflation and had been shamed by the throttling and selfish restrictions imposed by the thirteen sovereign republics on nearly all interstate commerce.

Not only were they idealists in the cause of freedom and the rights of men, but they were practical politicians, and statesmen. Forty-one had served in the Continental Congress and 26 in state legislatures; 14 had served as state judges or attorneys, 13 in state constitutional conventions, and seven had been governors of states. They were the leaders in war and in peace. In the darkest days of the revolution they had been the firebrands who inspired the disheartened armies of the colonies. When the merciless heel of George III ground heaviest upon their rights and privileges as Englishmen, theirs had been the most compelling cries of objection.

The group contained 28 lawyers, and all members are believed to have been God-fearing men. Ellsworth, Rutledge and Wilson subsequently served on the Supreme Court. Washington and madison became presidents and Alexander Hamilton was secretary of the treasury in the nation’s first cabinet.

To select any one and say he was the greatest man in the assembly would be difficult. But as in all groups there were some who excelled in stature and leadership.

George Washington, commander-in-chief of the Revolutionary Army, and destined to be elected twice to the high office of president, was chairman of the convention. His steady impartiality and the respect which all men bore him, set him apart as the great balance wheel of the convention. When the debates and quarrels were hot and the compromises difficult to achieve, the hand of a less able and discreet chairman might have swung the convention to the alternative of dissolution.

James Madison is considered by many to have been the pillar of the convention, and Washington himself called him the Father of the constitution. Through 79 arduous 7-hour work days Madison faithfully recorded the proceedings and debates without ever missing a single speech. Then for hours upon end, after each day's adjournment, he would rewrite his notes for the day. These notes were sold to the government by his widow in 1837 for the sum of $30,000. In addition to this self-imposed duty he led out in many of the debates and discussions both on the floor of the convention and in the caucuses of the Virginia delegates.

Benjamin Franklin then in the 82nd year of his illustrious life and enjoying national fame for his best seller, Poor Richard's Almanac, was dean of the Convention. His was the role of peace maker, for which position his long experience in the capitals of Europe as a representative of the Colonial government had fully fitted him. It was he who arose on the 28th of June, when the convention had struck an impasse and was on the verge of dissolving, to urge the delegates to "employ the assistance of Heaven."

James Wilson of Pennsylvania is considered by many to have been the most important man in the Convention next to Madison. To Gouverneur Morris of the same state goes much of the credit for the literary style of the final document. He, it is reputed, was the only man with sufficient daring to welcome Washington with a slap on the back.

John Adams who had served on the committee which drafted the Declaration of Independence, and who was destined to become president, was in England at the time. Thomas Jefferson also was abroad. John Hancock, Patrick Henry, and Thomas Paine were all men of national standing and renown but were not members of the convention.

There are those who believe, and the author is one, that the document signed in the convention on the 17th of September in 1787 did not emanate from the wisdom of the Founding Fathers alone, wise and experienced as they were. Rather the inspiration of the Almighty was with that little body, and they were led to prepare a Constitution which would preserve the rights and privileges of men on this earth so long as men were endowed with sufficient virtue to support those God-given freedoms.

4. The People Who Adopted It

There were more votes cast in Salt Lake County in the general election in November 1944 than were cast in favor of the adoption of the Constitution of the United States of America in all of the 13 sovereign states in 1787 and 1788.

The Constitution was adopted by conventions called in the 13 sates, and approximately 160,000 male persons participated int eh selection of delegates to these conventions. About 100,000 voted for delegates who would adopt and support the then revolutionary document, and 60,000 ballots were cast for delegates against the new political theory. There were about 105,000 votes cast in Salt Lake County for the two gubernatorial candidates in the last general election.

The right to vote was strictly curtailed. Property qualifications were in effect in all the colonies and it is estimated that less than one-fifth of the adult males were eligible to use the franchise. The white population was less than two and a half million.

The Continental Congress had called upon the state legislatures to send delegates to Philadelphia to "revise the Articles of Confederation." The delegates had discarded their instructions and assumed the right to create an entirely new document based on a theory of government anew in the annals of history.

They were fully aware of the steps they were taking and the effect the document they had written would have upon many of the people of the colonies. Hence when they came to the point of selecting a method of having the document submitted for approval they saw the necessity for circumventing the state legislatures whose instructions they had violated.

The system of having the people in the several states choose delegates to special conventions which would be called for the purpose of ratifying or rejecting the new Constitution seemed the one most likely to succeed. This method was accordingly chosen and it was provided in the document itself that the ratification of the conventions in nine of the states would be sufficient to establish the Constitution between the states so ratifying.

The document was presented to the Continental Congress. The states were requested to call conventions to consider it. Among a small portion of the people vigorous debates ensued on each of the various provisions. However the document was never widely understood nor discussed. Only 400 copies were ordered printed in New Hampshire, and the assembly in Maryland directed the printing of only 2000 copies. It has been estimated that outside of the delegates to the legislatures and conventions not one per cent of the population of the colonies had ever so much as read the Constitution prior to its adoption. (Shades of modern America!)

The conventions were elected and called to meet at various times in the several states. Of the persons who could meet the property qualifications to vote, few actually exercised their privilege. maryland had 25,000 qualified voters; only 6000 voted. and two-thirds of these were from the populated portions of the state.

In most of the state conventions the final votes of approval were close. In Massachusetts the delegates voted 187 for to 168 against. In Virginia it was 89 for and 79 against. A change of 6 votes would have kept Virginia out of the new Union although her delegates had been some of the most active and eminent in the Constitutional Convention. The New Hampshire convention met in February of 1788, and as it was apparent that sentiment was against the new form of government, an adjournment was engineered until June. When the convention reconvened, there had been a change in personnel and the vote was 57 for ratification and 47 against.

The New York convention did not convene until June of 1788 and the initial sentiment was against ratification. News of the New Hampshire and Virginia ratifications arrived during the early sessions and the New York delegates seeing their state facing isolation out of the new Union finally ratified by a margin of three votes, a vote of 30 to 27. Before taking this vote, however, the New York Convention had unanimously passed a resolution calling for a second constitutional conventions to draft a second and more acceptable document.

Rhode Island sentiment was about 10 to one against ratification, and she and North Carolina did not come into the Union at this time. Rhode Island had not even bothered to be represented in the Constitutional Convention. It is said that 8 of the states which did ratify the Constitution, did so only because of an understanding the a Bill of Rights would be added by amendment.

But now, by the skin of their respective teeth, as it were, 11 states had ratified, and the new government was established. Early in 1789, 13 years after the Declaration of Independence, the newest and most basically sound nation on earth elected George Washington to be her first president.

5. The People Rule

The people order and the king obeys. The people speak and the crown gives ear. The people are the masters, the king their servant. This is the true order of civil government.

The government of the United States of America is the first one in civil history in which this true basic principle has been effectively established. The history of kingdoms has been one in which the kings were almighty and the citizens of the realm were their serfs. The development of the common law is the story of freemen wrenching from their kings the rights of self government which those kings had usurped and assumed by force of arms.

This story is generally considered to have its beginning with the Norman Conquest in 1066. William the conqueror was in very deed a conqueror. He took over England both the people and their lands and their wealth. All things were his and behind him stood a conquering army to enforce his will. He was the Sovereign.

He set up his own government and personally issued the laws administered them, and when disputes arose between his subjects, he assumed the power to judge them. All legislative, executive and judicial functions were centered in him.

Naturally he divided the lands and wealth of the kingdom among his captains and noblemen, and appointed various of them to act as his representatives in performing governmental acts. He appointed tax collectors and sheriffs, chancellors, and judges of lower courts, but to each appointee the authority to act was delegated from the King and they performed their functions in his name. sovereignty thus was centered in one man and its exercise was delegated by him to various agents who were responsible solely to him for their acts.

This type of absolute monarchy inevitably incurred the opposition of the people. And for generations and centuries they resisted absolutism and demanded rights and guarantees of freedom from their sovereigns. By 1215 the Barons were able to force King John to sign the Magna Charta, which is the first written constitutional document developed in the common law.

Later came the Petition of Rights and the English Bill of Rights, and various enactments of parliament. Each placed restrictions on the exercise of the sovereign power by the King. Trial by jury was guaranteed. The House of Commons gained the right to initiate all revenue bills and to specify the uses for which appropriated money might be used, and so forth.

By continual struggle and at least two revolutions, and the execution of some of their kings the people finally established reasonably secure guarantees against encroachment upon their basic liberties. But still sovereign power rested with the king and the rights of English freemen were protected only by restrictions upon the exercise of that power. This was the state of affairs in the 1770s when George III was attempting to impose his sovereign will upon the American colonies.

The American Revolution severed the political ties of the colonies with the mother country. No longer were they subject to the sovereign will of the English throne. The pendulum swung completely over and the colonists determined and announced that sovereignty now rested with the people as a whole. And the people were to be the protectors of their own rights.

The Declaration of Independence, after affirming the existence of inalienable rights, states, “That to secure these rights. governments are instituted among men, deriving their just powers from the consent of the governed.” The people are sovereign. They say what form of government they will have and what powers it may exercise. The functions of government are to be delegated by them to their representatives and only such of the powers of government as are delegated can be exercised. Sovereignty is to flow from the people to their governments and no longer from the government to the people.

The first words of the Constitution affirm this new theory. “We the people” ordained and established the Constitution. Such powers as may be exercised under the Constitution are the direct result of the delegation of the right to so act by the people.

The philosophy of limited sovereignty for the government is evident throughout the whole document. But as if to make more sure that which was already certain, the colonists included in two of the ten articles of their Bill of Rights the ninth and tenth amendments to the Constitution. By them they declare as plainly as language allows the supremacy of the people and the limited authority of the people’s government.

These state: “The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.” And, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Thus the people order and the government obeys.

6. Democracy Attempts Suicide

“Remember, democracy never lasts long. It soon wastes, exhausts and murders itself. There never was a democracy that did not commit suicide.”

This warning and prophecy was uttered by one of the early patriots in the heat of the debates over the acceptance of the new and revolutionary Constitution. He could view all the history of the past, and it was apparent that no government had long endured which attempted to guarantee and preserve the rights of free men for which the Revolution had been fought.

But this very fact was the basis for the decision of the Founding fathers to limit democratic government by establishing a written Constitution. They did not establish a pure democracy, although the many principles and benefits of democracy were included. The Constitution itself says that we have a “republican form of government.” It is a representative and constitutional democracy.

In a democracy the supreme law of the land would be the will of the majority of the people for the time being. Any time that 50 percent of the people plus one determined upon a course of action, then that would be binding, and would be the expression of the sovereign will of the government.

In a democracy wherein, for the sake of efficiency and convenience, government is administered through elected representatives, then the sovereign and unalterable will of the people would be expressed by 50 per cent of the representatives plus one. This form of government is purely and simply one of majority rule.

Under such a system the passions of men would sway the exercise of sovereign functions from one pole to another. The will of the people today might not be the will of the people tomorrow. Any time the majority of the people would elect to deprive the minority of their rights, no matter how sacred, then those rights would melt away as the hoar frost. The will of the majority would be supreme.

The Constitution is a code of personal liberties of free men. “We the people” who adopted it and made it the supreme law of the land refused to do so until they had received an unalterable assurance that a Bill of Rights setting forth by name many of their inalienable rights would be made a part of it.

The people in whom all sovereign power rests ordained and established the Constitution and by it delegated certain powers to a national government. At the same time they reserved to themselves the freedoms and privileges they had fought for, and they denied their government the power to interfere in the exercise of these rights and freedoms. Hence we have freedom of speech, of the press, of religion, the right to assemble peaceably and petition the government for redress of grievances, the right to own property and to be secure in that possession, and many others.

A majority plus one cannot legally deprive any single individual of any of those rights. Nor can 60 percent of the people, nor 80 nor 90, nor all of the other people in the nation combined. The only means of infringing these rights would be to amend the supreme law of the land which is the Constitution, and delegate to the national government the power to control in an additional field.

The nature of our government is such that minorities are protected in their rights. The sovereign citizen in sparsely populated Nevada cannot have his rights trampled on by the mere weight of democratic numbers by the great state of New York.

The great problem is that of keeping alive in the breasts of free men the identity and value of the rights which are preserved to them through the Constitution. It is in time of war or other real or pretended emergencies that these rights are most easily lost. Then above all other times the people must be the guardians of the cause of liberty.

“We may well wonder in view of the precedents now established, whether constitutional government as heretofore maintained in this republic could survive another great war even victoriously waged.” These are the words of Charles Evans Hughes. The time is June of 1920. The first world war has but shortly passed.

If this warning was true a quarter of a century ago, how much more timely it ought to be to us today. The other great war has arrived, and God helping we will be victorious. But will we have in full force and bloom the inalienable rights of which we boast?

The suicide of the republican form of government will be complete if these rights are allowed to lapse. The Constitution is the bulwark upholding them. If they are preserved to us and our posterity it will be because that document is held inviolate. It will be because the sovereign American citizen refuses to permit the circumvention of the supreme law of the land.

7. These Inalienable Rights Belong To All Mankind

Do we really have inalienable rights? If so, what are they? And from whence do they come?

The Declaration of Independence announced for all time for American free men the doctrine of inalienable rights. “We hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends it is the right of the people to alter or to abolish it, and to institute an new government.”

An inalienable right is one that cannot be given away. It comes to man as a free gift from the Creator. It is an inherent and essential part of living on the earth. Man cannot delegate it to his government nor to any other man. If some of these inalienable rights are taken away from man, then he no longer enjoys free agency, and if all of his inalienable rights are taken from him then life itself must cease, for life is one of these rights.

What is the right to life? Obviously it is to live as a human being upon the earth. But it is more than this. It is the right to live and not have the government, the king, or any person put you to death. It is the right to be free from the assassins bullet and the tyrant’s sword. “Off with his head,” has been a password between despots and their executioners. The Constitution helps to preserve the right to life by guaranteeing every man an impartial trial by a jury of his peers, all twelve of whom must stand unanimous before life can be taken.

The right to liberty goes hand in hand with the right to life. This is the privilege to be free and to be unrestrained in all activity except that which interferes with the equally sacred rights of others. The Ceasars banished their political foes. The right to liberty is the right to be free from banishment. It is the right to be free from arrest except for crime and then, in most cases, only upon a warrant. It is the right to a writ of habeas corpus, and to bail except in capital cases where the proof is evident and the presumption sure. Liberty is a most sacred heritage of free men; most of our wars have been fought to preserve it.

No person shall “be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” There is included in this the right to property. It is pure unalloyed capitalism and is wholly repugnant to every principle of communism and of socialism, or fascism and of marxism. It is so sacred to Americans that twice they have amended their Constitution to preserve it unto themselves. The first occasion was in the 5th amendment just quoted, and the second in the 14th amendment which decrees, “No state shall … deprive any person of life, liberty, or property, without due process of law.” We cannot do away with the capitalistic system of free enterprise without first doing away with the supreme law of the land, the Constitution of the United States.

The right to law is inherent in our form of government. It is guaranteed in every section and clause of the Constitution. All men are created equal before the law. There is no favoritism. It is the right to equality. both political and economic. It is the right to justice, to due process, to equal protection of the laws. It is the privilege of every man to have his day in court, and to have his rights protected in

his own community no matter who the offender may be, whether he is the president, a general, a magistrate, or any government official. no man is above the law, but all men have the right to law.

No inalienable right is more sacred than the right to freedom of conscience and worship. no privilege was more dear to the founders of this nation than the right to be free in the exercise of one's own religion. Much of the basis for the colonization of America was built upon this cornerstone. No man can be compelled to adopt any religion, or to pay taxes for the support of any church, or be deprived of the opportunity to hold office because of his religious sentiments. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

These rights–to life, to liberty, to property, to law, and to religion–are some of the more sacred inalienable ones. They are the free gifts of God, and rightly belong to all mankind, but all men are not now free to enjoy them. The government of the United States is designed to preserve them for all its municipals. The Constitution was ordained and established by the people to be the guardian of their inalienable rights.

8. Americans Have Their Rights

"I know my rights! You can't do this to me! I'm an American citizen!"

This is a healthy and typical reaction of Mr. Average Citizen to the petty restraints of bureaucrats, or to whatever restraints government officials may attempt to impose upon him.

Americans have more rights, freedoms, and privileges than any other people on earth. And they have so organized their government that these freedoms can more easily be preserved than they can among any other people. The spirit that rebels against governmental meddling in the affairs of the people of this nation is one that should be fostered. If the day comes that Mr. Average Citizen meekly submits to government intervention and control of his economic and social affairs then he will be in line to have his rights and freedoms curtailed. We need to develop the desire to keep our freedoms and rights alive. To do this we should know what these rights are. both our inalienable or natural rights and our political rights.

Yes, Mr. Average Citizen, what are your rights? Well, there are the great inalienable rights to life, liberty, and property, to law, and to freedom of conscience. These are the natural rights of all mankind and come as the free gift of the Creator. But there are many more that have been developed and established by Englishmen throughout the centuries as part of the common law.

The power to prosecute for offenses or supposed offenses can be an instrument of severe persecution in the hands of a despotic government. The fear of this is less in America than in any other nation. We have the right not to be deprived of life, liberty, or property without due process of law. This includes a trial by a jury which shall be the sole determiners of the facts of the case.

Americans have the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. They may be arrested only upon warrants supported by a complainant's oath, except for certain crimes committed in the presence of the arresting authority. They are entitled to know the nature of the accusation against them. They cannot be tried twice for the same offense, nor can they be forced to testify against themselves. Trials must be speedy and impartial and held in the district where the offense was committed. Witnesses must confront the accused and he must have compulsory process for obtaining his witnesses.

Excessive bails are prohibited. Cruel and unusual punishments cannot be inflicted. Americans have the right not to be punished by maiming or disfiguring, nor can they be banished for crime. or for any cause. Laws cannot be passed making an act already done a crime or increasing the penalty for a crime after its commission. The Congress can pass no bill of attainder.

There is the right to take civil causes into court and have them determined impartially. Jury trials are preserved in most civil cases. The courts are open to every man, and none can be denied. Contracts cannot be impaired by subsequent laws, nor can the right to freedom of contract be curtailed.

All men have the right to political freedom, to vote as they choose, to be represented in the legislative body which taxes them, to enjoy local self-government and to be free from involuntary servitude or slavery.

Freedom of speech and of the press are axiomatic. The rights to assemble peaceably and to petition the government for redress of grievances cannot be infringed. The people cannot be denied the right to keep and to bear arms, nor to be independent in their forms of worship.

Economic rights are equally sacred. There is the right to work and to trade, or to refuse to work. There is the right to earn money and make a profit, to choose any business that one elects, and to put one's own price on his services or goods. There is the common law right to be free from combinations in restraint of trade, or combinations which restrict the output of a man's labor.

These things, and many others, are not just laws that have been enacted. They are rights. They have grown up as a part of the common law. Their development has taken centuries and they have been recognized by the courts, have been enacted into laws, and have been recorded in constitutional documents. Over 700 years ago the Magna Charta began listing them and announced that they would be preserved inviolate.

All down through the centuries of English and American history instances have arisen in which these and kindred rights have been curtailed and infringed and taken from the people. But each time the determined will to be free has risen again and the people have insisted that their rights be preserved.

The struggle has by no means ceased. Rights are being infringed today even as they were in the days of George III. The people then refused to be restricted and their rights were maintained. The people today must refuse to give up their rights, even as their forebears refused.

In times of war certain rights are suspended or restricted. The right to a writ of habeas corpus may be lawfully denied in times of war or rebellion, but when peace comes again the right is still there. Americans must preserve their rights after this war. If they know what they are and the value they have, they will preserve them.

9. You Have The Right To Work

"Six days shalt thou labor, and do all thy work." this is part of one of the Ten Commandments. It is a law that has not been repealed.

When the first man and the first woman were sent forth out of the Garden of Eden to till the ground from whence they were taken, the same Law giver had decreed that, "In the sweat of thy face shalt thou eat bread, till thou return unto the ground."

Man is thus commanded to work, and therefore he has the right to work. The duty cannot be imposed unless the means of accomplishment is also given. This then is one of the inalienable rights Declaration of Independence says are the endowment of all men from "their Creator."

All men have both the duty to work and the right to work. Neither of these can lawfully be taken away or curtailed at least not without a cause. The duty is a personal matter, and each individual must exercise his own free agency in determining what he will do about it. The right to work is also a personal matter, but because of the nature of the complex society in which we live, it is also a matter which must be protected and preserved by the arm of the people's government.

The common law right to work like the other common law rights has been developed down through the centuries. Over 700 years ago the Magna Charta, that first great English constitutional document, affirmed the right to labor and to trade. Merchants were guaranteed the privilege to go and to come and to sell freely without let or hindrance.

From this beginning Englishmen demanded more and larger guarantees of this right. Free men may now elect to work in any trade or field they choose. They have the right to earn money and to make a profit, to demand such wages as they can get and to refuse to work for them if they are not satisfactory. This is part of the right of freedom of contract.

The right to work includes the right to be free from coercion by any man or combination of men. The laborer may not be restrained in his trade, or have his output restricted, his price fixed, or be injured by unfair methods of competition.

The right of workers to organize is established and valuable, but that right ought not to contain the power to deny other men their inalienable right to work. Trade guilds prospered in France prior to the French Revolution. They started out as unions or combinations of workmen, but by the time of the revolution they had grown rich and aristocratic, and had long since ceased to represent the employee. They were so powerful that a man could not get work without the consent of the guild. The exercise of this power enabled them to be gradually converted into combinations of employers. The power to grant consent to work is the power to employ. They dominated the economic structure of France, gained the hatred and contempt of the people, and of course, were destroyed with the revolution. their downfall was welcomed with bonfires and the ringing of bells throughout France.

In England workers never permitted themselves to become subject to the bondage of the guilds. They insisted upon their right to work, and it cannot be stated too plainly that this is a right. It was considered so fundamental a right by the people of Utah that they endeavored to preserve it by making it a part of the Constitution of the state. “Every citizen of this state shall be free to obtain employment wherever possible, and any person or corporation maliciously interfering or hindering in any way any citizen from obtaining or enjoying employment already obtained from any corporation or person is guilty of a misdemeanor.” This is the law of the land in Utah and neither the legislature or any individual can properly deny this right.

There is much being said about Four Freedoms one of which is freedom from want. This is not a common law right and has not been developed and incorporated into our form of government. Freedom from want carries with it a guarantee of security. If the government undertakes to guarantee this as a right it will be supplying loaves and fishes to the people, lest they lacking these find themselves in want.

Security is a desirable end, but it is insignificant in comparison to the right of opportunity. Instead of attempting to provide a cow and an acre to every man to insure him freedom from want, the people should insist that their government preserve free enterprise. This will give the opportunity to acquire those things which will satisfy man’s wants. The right to work is inherent in free enterprise. It is part of the right of opportunity. When the right to work is denied, then free enterprise and opportunity are rejected, and our traditional way of life with its political and economic freedoms is in jeopardy.

10. Shall It Be Jehovah Or Baal

“All men may walk as their consciences persuade them, every one in the name of his God. And let the saints of the Most High walk in this colony without molestation in the name of Jehovah, their God for ever and ever.”

No, this is not a quotation from the Bible. it is part of a code dealing with freedom of worship. It was enacted by the first colonial legislature ever to meet in the colony of Rhode Island. The time was 1647.

This was probably the first substantial guarantee of real freedom of worship that had been made in the Christian era. Even this guarantee was far from established in fact, and was maintained in theory only for a short time. At the time of the adoption of the Constitution of the United States in 1789 there were only two of the 13 colonies that had provisions in their state constitutions

guaranteeing religious freedom. They were New York and Virginia, and their state constitutions had been adopted as late as 1777 and 1785. All of the other colonies had religious tests for their officials, or in some form made religious discriminations.

The Catholic Church dominated the Christian religion until the era of the reformation. The Church of England was the most powerful daughter church. It became the official church of the realm, was supported by the taxes of the people, and ruled by the Parliament and the King. This was the state of affairs at the time of the Revolutionary War.

One of the moving factors involved in the settlement of the various American colonies was to gain religious freedom, and escape from the restrictions on conscience which were everywhere in effect in the old world. The result was that many forms of worship were set up on this land. All were comparatively strong in their chosen locality, and there was no single church that could dominate all the others.

This condition in which all churches were equally strong and equally weak made it a political impossibility for any one denomination to foster and establish a state church. Thus it came about, more out of political necessity than out of any desire on the part of the religionists of the day, that equal freedom of worship was guaranteed to all.

The body of the Constitution contains the provision that no religious test shall ever be required as a qualification to any office or public trust under the United States." This, of course, was a thrust of defiance at the English test act, which prescribed a religious test as a condition precedent to holding a civil position. The first sentence of the first amendment provides, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

This complete development of the guarantee of freedom of conscience is peculiar to the United States alone. The growth of religious freedom has its roots in the common law, but our constitutional guarantees surpass anything that then existed in the world, or that even now exist in any other nation. Englishmen are still paying taxes to the support of the church of the state.

The denial of religious freedom in other nations is a crime for which their rulers will be held accountable before the judgement bar. Germany and Russia have formally and as an official act of state denied Christ and forbidden or limited His worship. No mention may be made in Germany of "Zion" or other things closely associated with the antiquities of the Jews. jewish persecution in all ages and by many nations has been always and fundamentally a matter of religious persecution. Denial of the right of conscience in many nations today ranks in severity with the most abominable restrictions ever placed upon mankind by any despot in any age.

The skirts of the United States are not clean. Before the adoption of the Constitution there were many severe plagues of persecution in the colonies. Since the establishment of that document there have been many additional such scourges. The Missouri persecutions of the Latter-day Saints in the 1830s were as reprehensible and iniquitous as any in the history of the world. In complete disregard of the constitutional provision prohibiting religious tests as a qualification for holding public office, the Congress imposed such a law upon the territory of Utah in the last half of the nineteenth century.

Religious liberty is not yet secure in actual practice even in the United States. We have yet to arrive at the day spoken of by the legislature of colonial Rhode Island in 1647 when all men may walk as their consciences persuade them, and that without molestation.

11. "Privilege Of Speech Is Granted"

Her Royal Highness Elizabeth, the Queen, to the greatest deliberative body in all the world, the Senate of the United States: "Greetings. Sirs: Privilege of speech is granted you in your deliberations. But I would have you know of what that privilege consists. It is not to speak every word that you choose, or to utter any thought that comes into your brain. Your privilege is to say yes or no. I have spoken." Signed Elizabeth, Regina.

Queen Elizabeth exercised just exactly that authority over the House of Commons in merry England. And when one Peter Wentworth arose in that august body to question her authority to restrict the speech of free men and to control the Parliament, she clapped him into the Tower of London.

Elizabeth herself had attacked the right of freedom of speech in the House of Commons. Wentworth, with the courage of Elijah before Ahab, and perhaps some of the inspiration, arose to say: "Sweet is the name of liberty; but let us take care lest, contending ourselves with the sweetness of the name, we lose and forego the thing. Two things do great hurt here, one a rumor which runneth about the House: 'Take heed what you do. The Queen's Majesty liketh not such a matter. Whosoever preferreth it she will be offended with him!' the other message sometimes brought into the House, either of commanding or inhibiting. I would to God, Mr. Speaker, that these two were buried in hell. The king hath no peer in the kingdom, but he ought to be under the law, because the law maketh him king."

But like Ahab, the haughty Elizabeth was not deterred by righteousness of the cause. Said she: "Privilege of speech is granted, but you must know what privilege ye have; not to speak every word what he listeth, or what cometh into his brain to utter; your privilege is ay or no."

Freedom of speech and of the press are sacred rights which thanks to peter Wentworth and other valiant lovers of liberty have been substantially established in our day in this land. In many other nations it is not so.

To criticize a sovereign who rules as well as reigns is a costly business in any nation and in any age. In Germany, japan, Russia, Spain, Argentina, and a multitude of other nations men do not speak their thoughts freely at any time, nor does the press approach any degree of freedom. To some of us in the United States these rights are taken completely as a matter of fact, and we give them no more concern than we do the air we breathe. There is always a danger that one's rights will be restricted when they are accepted indifferently and without appreciation.

The invention of printing, a great good, brought with it the fact of censorship, a great evil. This power was first assumed by the clergy, but after the Reformation, in the case of England, the power devolved upon the crown. Censorship was so rigid in England that at one time nearly all printing was prohibited until it had first been "seen, perused and allowed" by the Archbishop of Canterbury or the Bishop of London.

From that early day in England to this day in the United States the curse of censorship has not been entirely lifted either in war or in peace. Few question the necessity to restrict military information in time of war. The right of self-preservation dictates that we not tell our enemies where and what our defenses are. But most people think, and that rightly, that the power of censorship which carries over into civilian agencies is used not to preserve information that would be of aid and comfort to the enemy, but to cover up bungling and inefficiency in governmental administration.

Most federal agencies are authorized to classify information as restricted, confidential or secret. Information so classified may not be revealed to the public or press without incurring severe penalties. It is reputed to be a common practice among civilian agencies of the government to classify in this manner information that the people have a right to know. This, of course, is to avoid bringing discredit upon the agency.

The press is a great guardian of the liberties of the people. The acts of kings and rulers are swayed by the moment that a free press makes about those acts. It was an inquiring reporter who found that there was actually no such document as the Atlantic Charter. A president and a prime minister have been trying to explain what agreement was actually reached ever since. None are too high or too mighty to be above the power of a free press.

A great English statesman declared that the emancipation of the press had "done more for liberty and for civilization than the Great Charter and or the Bill of Rights."

Elizabeth said, “Privilege of speech is granted.” Elizabeth was wrong. Freedom of speech and of the press are not granted. They belong to the people. They are not privileges only; they are rights. The people’s government cannot regulate them. “Congress shall make no law … abridging the freedom of speech, or of the press.” This is the guarantee of the first Article of the Bill of Rights.

12. The People Create A Government of Laws

The Parliament can do no wrong. But the Congress can, and does.

Anything that is done according to the will of the persons holding the sovereign power in a nation, constitutionally speaking, is right. The sovereign power in England rests with the Parliament. It does not rest with the Congress in the United States, but with the people. The acts of Parliament create the English Constitution. In the United States the people ordained and established the Constitution.

There is no function of government in England that cannot be performed by Parliament. It enacts laws, administers them, interprets them, and enforces them. It is judge, jury and prosecutor all wrapped in one and there is no check on the powers it may exercise.

Parliament passes a law which is the legislative function. Then it appoints from its membership ministers to administer and execute the very law which it has passed. This is the executive function. And finally it acts as a judge to interpret the law, or to decide upon the guilt or innocence of those charged by its ministers with violating the law. This is the judicial function. The House of Lords is the Supreme Court of the realm.

Government in England is designed to protect the people form the king. When the American colonies threw off the yoke of the English king, there was no longer a need to be protected from him. They were now a free and independent nation. But the fear of government was uppermost in the colonial mind, and so when the sovereign people determined to delegate the functions of government to the United States they imposed severe restrictions on the exercise of those powers even by their elected and appointed servants.

The American Constitution divided all the functions of government among three separate and independent departments. The Congress is authorized to make the laws, the executive to administer them, and the courts to interpret them. None of these departments can poach on the territory of the other. Each exercises only that portion of the sovereign power that has been delegated to it.

But that is not all. Not only are they independent in their spheres, but they also act as a check on the other departments in the performance of the functions assigned to such other departments. The president can veto legislation; two thirds of the Congress can override the veto. The Congress can pass laws and the president approve them, but a majority of the Supreme Court may determine that they are outside the authorized constitutional scope and therefore void. The justices of the court are appointed by the president with the consent of the senate, and funds for the support of both executive and judicial branches must be appropriated by the Congress.

Never under any circumstances can the same body of men both make the laws and administer them, or administer them and judge those who break them. None of the departments can delegate their functions to either of the other.

This system of checks and balances is an American development. It was expressed in the Constitution of Massachusetts, which was adopted in 1780 in these words: “In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.”

Daniel Webster said that this clause, “to the end it may be a government of laws and not of men.” was the greatest ever written in any constitutional document.

The virtue of the English government is in that it protects the people from the oppression of a tyrannical king. Its defect is that it does nothing more. An unrestrained Parliamentary government is a horror as great as an unrestrained executive. A despotic Congress might discard the Constitution and usurp power unto itself, and become like the English Parliament, if there were no checks and balances.

The genius of our government is that it protects the rights of the people from infringement by any branch of the government. This is government by laws and not by men.

13. America Chooses A Successor To George III

Thomas E. Dewey would be the vice-president instead of Harry S. Truman if the Constitution had remained unto this day as it was originally written by the framers and accepted by the people. Hoover, Landon, and Willkie would each have presided over the Senate as holders of the second highest office in the power of the American people to bestow, if we had not departed form the procedure given in the original Constitution.

The people of the United States have never elected a president or a vice-president. They have provided through their Constitution that this power will be exercised by an Electoral College. The delegates to this unique organization are chosen by the qualified voters of the several states.

The original Constitution provided that the candidate receiving the greatest number of votes in the Electoral College should be the President, provided that this number was a majority. Then that candidate for president who received the next highest number of votes would automatically become the vice-president.

This procedure was established in the days when there were no political parties as we know them today. Differences existed among the colonies, but they were geographic and economic differences. Washington was elected the first president and John Adams the first vice-president on a strictly non-partisan basis.

With the development of political parties it became apparent that this Electoral College system if left without change would thwart the will of the voters in every presidential election. Under the two party system it would mean that every defeated presidential candidate would be come vice-president.

The 12th Amendment was devised to preserve the form of the Electoral College, but to change the procedure so that the president and vice-president would represent the same political party, A man is now a candidate for either the office of president or of vice-president and not for both at once and that on the same ballot. This is the Amendment which chose March 4th as the inaugural date. The only change since then has been the “lame-duck” or 20th Amendment which provides that the terms of the president and vice-president shall end and commence at noon on the 20th day of January following their elections.

The selection of a term of office and a manner of election of a president was one of the difficult decisions which faced the Constitutional convention. Hamilton preferred a monarchy patterned on that of mother England, and under his plan there would have been no problem of election, nor would there have been created the republican form of government which we now enjoy.

There is considerable debate recorded on the merits and demerits of an elected life tenure. The term of office was interwoven with the matter of eligibility for reelection. Time after time the delegates agreed upon one term or another only to discard their decisions and vote for some other term at a subsequent ballot. A 20-year term was suggested by King, a 15 by Gerry, and an 11 by Martin. Mason sponsored a 7-year term and on two occasions the convention voted for that term. Later a 6 year term was accepted and finally the present 4 year term. There have been well over 100 resolutions introduced in Congress calling for an amendment to the Constitution which would change the presidential term.

It took 11 different polls of the delegates to finally determine upon the method of choosing the president. At one time the proposition of popular election passed with a vote of 9 states to one, the Pennsylvania delegation being the only one voting in the negative.

In the absence of political parties and under the conditions existing in the 13 original states the Electoral College undoubtedly was an ingenious success. Today it is completely outmoded. Even the election of senators who were designed to represent the states and not the people, has been changed by amendment to a direct election by the people, rather than by state legislatures.

Twice in the history of presidential elections candidates have been elected after receiving only a minority of the popular vote. Tilden in 1876 and Cleveland in 1888 both received more popular votes than Hayes and harrison, but the latter two were elected. In 1912 Wilson received 42 percent of the popular vote and 82 percent of the electoral vote. It has been calculated that 300,000 strategically placed votes for Dewey would have been worth more than the 3,000,000 vote lead of Roosevelt.

There is no method for changing the Electoral College setup except by an amendment to the Constitution. This ought to be done.

14. 'When The Wicked Rule The People Mourn'

Said Benjamin Franklin to George Washington, "By what title shall the president be called?" Said George Washington to Benjamin Franklin, "His High Mightiness, the President of the United States and Protector of Their Liberties."

Washington was not alone in his choice of such a title. A committee appointed by the first senate recommended a similar title. John Adams the first vice-president contended that if Washington were called merely "the president of the United States," that the common people of other nations would "despise him to all eternity." But the House of Representatives insisted upon that title and finally prevailed.

The office of president of the United States is the most powerful held by any single individual in the wold. Despite all the restrictions placed upon him his influence far surpasses that of any dictator. He is Commander-in-Chief of the greatest army and navy now in existence, and he is practically unrestrained in the use he makes of them both in war and in peace.

The power to declare war rests with the Congress, but the president is in a position to provoke a war, and to have it going full blast before the Congress ever learns the facts.

The president negotiates treaties with foreign nations, although two thirds of the senators must approve them before they bind the nation. With the concurrence of the Senate, he appoints ambassadors, ministers, consuls and judges of the Supreme Court. A host of other administrative officials are appointed without such consent. He receives ambassadors form other countries, and has power to grant reprieves and pardons for any crime except that of impeachment. He can veto any law, No bill becomes a law until he has approved it and signed it. It takes two-thirds of the Congress to annul his veto.

Grave duties are imposed upon him. He takes an oath to "preserve, protect and defend the Constitution of the United States." The Constitution says that "he shall take care that the laws be faithfully executed." He is required to give to the Congress information of the state of the Union, and to recommend to their consideration such measures as he judges necessary and expedient.

The president cannot enact legislation nor is he the final authority for interpreting the laws that have been enacted. He can be impeached, and an independent Congress can refuse his recommendations and neglect to appropriate funds for his projects. He is subject to the law the same as any man, for it is by the law that he becomes president. He must be a natural born citizen, have attained the age of 35, and have been 14 years a resident of the United States.

The powers delegated to the president in the Constitution are so great that many of the colonist feared to adopt it. It was largely because of this sentiment that George Washington declined to consider a third term as executive. but the power of the presidency in

Washington's day was meager in comparison to the influence wielded by that office today. The growth of the nation has added to the stature of the office. The increase in functions preformed by the federal government have multiplied its responsibilities.

The charge of "dictator" was hurled at both Lincoln and Wilson, and surely they were to of our strongest presidents. But their powers pale into oblivion in comparison to those now resident in the hands of the chief executive. The last 25 years has seen the increase of boards, bureaus, and commissions. Regulations in the fields of interstate commerce, social security, wages and hours, and child labor, have heightened the influence of the federal government beyond anything dreamed of even at the beginning of this century. It is said that there are now over 3,000,000 civilian employees of the national government.

The Constitutional powers of the president are almost too great to be entrusted to one man. Even by staying strictly within them, and it is said that none of our dynamic presidents actually have, a power and influence is built up that makes it easy for the president to perpetuate himself in office.

The modern day increase in the powers of the presidency should call forth the placing of additional restrictions on that office. An evil disposed president could virtually destroy the nation and stamp out the rights of the people.

I suggest a constitutional amendment limiting the president to one term of 4, 5, or 6 years. The same amendment should abolish the Electoral College and provide for his direct election. The Electoral College was devised in a day when there were no political parties, and has since become grossly inequitable. The president has almost become what Washington suggested, that is, "His High Mightiness." The limitation of his tenure to one term is the only feasible way to place the executive department back in its true perspective with the legislative and judicial departments.

15. Thus Saith The Supreme Court: It Shall Not Stand

Congress enacts legislation. The president approves it. The people apparently want it. The Supreme court determines that it is unconstitutional and void. Thus the will of the people is defeated–or is it.

A great deal of important emergency legislation has been voided by the Supreme court, not infrequently by a vote of 5 to 4. Much of this has involved social and economic reform and experimentation. The majorities in congress favoring the controversial measures have been imposing. the hue and cry has gone forth that 5 of 9 old men are subverting the will of the people, hindering economic recovery and social betterment, and exercising more influence than the whole legislative and executive branches of the government. But what are the fundamental principles involved?

The government of the United States is one in which the sovereign power rests with the people. It does not rest with the government or with any department of it. The people are the rulers.

The federal Constitution is the document by which the sovereign people delegate to the national government the right and power to perform certain functions for and on behalf of the people. The national government is thus one of limited powers. It can act only in those matters on which prior authorization has been received from the people by means of a written constitution.

Not only did the people exercise extreme care in choosing the limited powers they delegated to the government, but they went further and expressly reserved to themselves all other powers, and plainly said to their government, "Thou shalt not exercise these." This then is the nature of government under a written constitution.

In England the Parliament holds the sovereignty and is supreme. There is no written constitution by which the people limit parliamentary powers. It has been said that the Parliament can do anything but turn a man into a woman and a woman into a men. Our Congress is not so; it is limited in the powers it can exercise, and the limitation is imposed by the people by means of the

Constitution. Thus anything that parliament does is right, constitutionally speaking, but anything that the Congress does is right constitutionally speaking, only if it falls within its delegation of authority to act.

It is the function of all courts to adjudicate the rights of individuals when those rights are brought before them in proper cases. If, in the course of determining what those rights are, it is found that there are two different legislative enactments involved, and these are in conflict with each other, it then becomes the duty of the court to determine which law shall apply and which shall be discarded.

For instance, if one law was enacted on one day and another on a subsequent day, and these two laws contradict each other, then the courts have generally determined that the law last passed will be the one to govern. This is simply a matter of choosing what law will govern in a particular case, and the fact that one of them is thus incidentally determined to be void is immaterial. It was the legislature that declared it void by passing a subsequent law in conflict with it. The courts are by such acts upholding the laws and honoring them. They are preserving the supreme law in preference to a lesser law.

The Constitution is the supreme law of the land. It was enacted by the people themselves and can only be changed or amended by them. It is the permanent expressed will of the people of the United States. Any acts of a legislature or of a Congress express merely the opinion of a majority of the representatives of the people at a given time. These representatives are acting with limited and delegated powers. The people acted with all sovereign powers when they ordained and established the Constitution.

Congress may enact a law which is in conflict with the permanent will of the people, with the supreme law of the land as expressed in the Constitution. If this occurs and a proper case comes before the court, a choice must be made between the higher law and the lesser. The effect of this choice is to declare the act of Congress void, or, as is commonly said, unconstitutional.

This is the natural function of courts. If this country is to have a written Constitution, then the courts cannot be denied this power. Otherwise there would be nothing to uphold the supreme law of the land as against any lesser law, and the Congress would become supreme and have all sovereignty.

Our form of government can only be preserved if this power of the courts is upheld. courts are truly the guardians of the Constitution.

16. The Congress Shall Have Power

“Be it enacted by the Congress of the United States that the Mohammedan religion shall be the only lawful one in this nation. All persons whomsoever shall pray 3 times a day kneeling toward Mecca, and one billion dollars is hereby appropriated for the support of this religion and the enforcement of this law.”

Improbable and facetious, you say; and you are right. But if there were no constitutional prohibition, the Congress could legally enact such a law. The Constitution which is the supreme law of the land and therefore a higher law than the statutes passed by Congress provides that, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

The acts of parliament are the supreme law of the land in England. Parliament could constitutionally enact and enforce such a statute, and in fact has enacted laws creating the Church of England, and providing for its support from the taxes of the people. The sovereign power in England resides in parliament, and all powers whether legislative, executive, or judicial may legally be exercised by that body. In fact the highest court in England is the House of Lords, and the kings’s powers are nominal and used only by consent of parliament.

In the United States the sovereignty has been retained by the people, and they have delegated to the Congress that portion which it may legally exercise. Freedom of worship remains with the people.

But suppose that the Congress in clear disregard of the limitations imposed upon it by the Constitution, did in fact enact such a law. Then who is to judge between the law of the Congress and the Constitution of the land? And which shall apply?

Parliament has on occasions passed laws extending its own life and putting off general elections. The present parliament has been in power for something like 10 years without an election. The Constitution provides that senators shall be elected for terms of 6 years and representatives for terms of 2 years. Suppose that Congress considered that because of war or other serious emergency a national election was not in the best interests of the nation and therefore enacted legislation extending its sessions to 10 years of 20, or 50 or for the life of its members. Then what? Or suppose that the Congress enacted legislation extending the length of the presidential term longer than 4 years. Who is to look out for the sovereign rights of the people and prevent their unauthorized usurpation?

It is the function of courts to determine what the law is and, when conflicts arise, to uphold that which is the supreme law in preference to any lesser law. This our courts do. It is their natural function, and so all of them, and the Supreme Court in particular, become guardians of the Constitution, because the Constitution is the supreme law of the land.

If our religious rights were infringed or our representatives extended their terms of office and such acts were then declared void by the courts, we would acclaim these judicial bodies as the saviors of our liberties.

But when the Congress steps outside of its delegation of authority and attempts social and economic reforms and experiments and these same courts determine that such laws conflict with the Constitution then the courts are condemned and maligned and people say that they are a hindrance to economic progress and industrial development. Or they say that the Constitution is outmoded and should be discarded. The multitudes seek the loaves and the fishes at the expense of their rights as free men.

Perhaps there are problems of an industrial life which should be regulated by congress and which Congress is now prevented from governing. But if there are and the sovereign people determine such to be the case, it is a simple matter for them to delegate more of their sovereignty to Congress so that such regulations may be put into effect.

Senator Ashurst once proposed an amendment to the Constitution providing that “The Congress shall have power to make laws to regulate agriculture, commerce, industry and labor.”

All of the New Deal measures would have been held constitutional under such a delegation of authority. This amendment would put the federal government in the position of being capable of regulating every detail of the economic life of every person in the nation. State and local governments would be reduced to mere nothingness. Centralization and its offspring bureaucracy would reign supreme.

The sovereign American citizens have so far not seen fit to delegate such omnipotence to their representatives. Until they do the Supreme Court will continue to protect and guarantee and uphold them in their constitutional rights.

17. Bureaucracy Comes of Age

“The influence of the crown has increased, is increasing and ought to be diminished.

This was a resolution directed by the House of Commons in 1780 against the tremendously popular George II. Translated into a modern objection in this nation it would read. “The influence of the federal government and therefore of bureaucracy, has increased, is increasing, and ought to be diminished.”

The centralizing of the powers of government is equally bad in any age. The development of the common law has been the process of de-centralizing the government from a sovereign to the people. One of the basic principles of the common law is that free men have the absolute right to local self-government, and also the right to be free from interference and coercion from a central and non-personal government. Our forefathers fought a revolution because that right was infringed by a despot.

No man or group of men has ever lived upon this earth with sufficient wisdom, ability and talent to operate a large civil government from a central seat of authority, and have that operation result in justice and equity. The burden is too great, the conditions too unalike. Woodrow Wilson expressed his view on this by saying that, “Uniform regulation of the economic conditions of a vast territory and a various people like the United States, would be mischievous, if not impossible.”

Economic and social conditions vary throughout the Union. The climate and the prejudices of the people are nowhere the same. This condition prevailed when the Union was born, and it prevails even more so today. It was freely recognized by the framers of the Constitution, and it cannot now be denied.

The people who ordained and established the Constitution took great care to see that they delegated to a central government only those powers of a national concern and which were manifestly outside the province of a state government. The 13 states existed and had their own constitutions and delegations of sovereignty, and were actively administering the local affairs of the people years before the national government was created.

The federal government was empowered to coin money, declare war, regulate customs and interstate commerce, handle the mail, govern foreign affairs, and such similar things as should be done by the colonies as a unit. The states retained the police power, the control of marriages, wages and hours, labor, manufacturing, crimes, and all matters of domestic and international government.

It is only in a limited way that the federal government ever should come in contact with these matters. The only constitutional provision that ever permitted the national government to exercise control over the internal affairs of the states was the 18th amendment. Since the repeal of that amendment, the federal government has no authority to enter into the internal and domestic affairs of a state unless the state forsakes the republican form of government, in which event the president must take steps to restore it.

Statesmen and politicians seldom directly challenge the doctrine of state sovereignty. But under the guise of the commerce clause the Congress has circumvented many sovereign state rights. To some extent a planned economy has been imposed upon the states by the federal government.

This has been a process of doing by indirection what cannot be accomplished by open process. One of the common procedures is to appropriate funds for a certain purpose, say the care of the aged, and then allot those funds to the states only on condition that certain regulations and standards set up by the Congress are put into effect in the state.

The effect of this is to withdraw the rights of local self-government from the states and to make them inferior to a central government whose uniform regulations cannot be made to apply fairly to all peoples and conditions. Social security, wage control, child labor, the control of manufacturing and industry are matters that should come under the sole supervision of the states. The interstate commerce clause should apply only to goods in actual transit between states.

The recent trends have been toward centralization. But the remedy is simple. It consists in sending to Congress men who will strictly construe the powers of the federal government; men who will desert the pork barrel and champion state rights.

Congress is in a position to preserve local self-government by rejecting laws which pertain to the domestic and internal affairs of the states. The loss of local self-government provides an easy approach by which the rights and freedoms of the people may be attacked and infringed. If the people were fully aware of this danger they would require their Congress to preserve the integrity of the states and diminish the influences of the federal government.

18. Has Congress Failed Us?

The rights and privileges of the people are restricted. The fault lies with Congress. The supreme Court holds that the federal government has power to regulate insurance on the basis that it is interstate commerce. The Congress is guilty. The president issues executive decrees having the force of law and these decrees deprive men of their right to civil trial by jury. It is Congress that has betrayed the American people.

Congress ought to be the strongest branch of the government, and the guarantor of the rights of the people. congress represents the people. All legislative powers of the federal government have been delegated to it. The people expect their rights to be preserved. It is their right to have them upheld inviolate.

The Constitution lists the delegations of authority that the sovereign people have given to their legislative department. It may collect taxes, duties and imposts, borrow money and pay the debts of the government. It is authorized to regulate commerce with foreign nations and between states. It can make rules governing naturalization and pass uniform laws on the subject of bankruptcies. The power to coin money and regulate its value, and to fix the standards of weights and measures have been delegated to it. Copyrights and patents, the punishment of counterfeiting, and the establishing of post offices and post roads are among its functions.

The Congress can declare war and make rules governing captures on land an water. It can raise and support armies and navies and make rules to govern them; however, no money can be appropriated for the use of the army for a longer term than two years. It can provide for calling forth the militia to execute the laws, suppress insurrections and repel invasions.

The Congress can define and punish piracies and felonies committed on the high seas, as well as other offenses against the laws of nations. It can create federal courts. It has jurisdiction over the District of Columbia, and over all forts, magazines, arsenals, dock yards, and such that may be acquired in the several states.

The Congress has power to make all laws which shall be necessary and proper to carry into execution any of the functions delegated to it in the Constitution. But that is all the power it has. No act can be done which cannot be justified under a specific clause or phrase in the supreme law of the land.

The fault with Congress has not been that it has not enough power to perform the functions that need to be performed by a national government. The trouble has been that the delegations of authority have been so construed by the lawmakers as to permit the passage of laws which will dictate the domestic and internal affairs of the states.

The single phrase in the Constitution that has given rise to more litigation than any other is the one authorizing Congress to regulate commerce among the states. That seems plain enough when taken at its face value, and it was probably plain enough to the men who wrote the document and to the people who originally adopted it.

To regulate commerce among the states is simply to establish rules which shall govern the transportation of items of commerce from one state to another. But, as it has developed, it is not quite that simple. The congress has chosen to regulate all things incident to the manufacture of goods which after their manufacture may be transported into another state. This type of regulation includes wages and hours, social security, labor conditions, price control, and nearly all matters pertaining to social and economic conditions.

The Supreme Court which interprets and sustains or rejects the enactments of Congress has over along period of time, and by repeatedly broadening the definition of interstate commerce, finally come tot he point where it upholds such legislation as being within the delegation of authority of Congress to act. One constitutional authority concludes that, “the commerce power, as interpreted in case after case, now seems sufficiently broad to provide grounds for control of almost all aspects of the economic life of the nation.”

The fault is not with the courts. They are bound to sustain the legislation if they can. The fault is not with the president, at least not ultimately. He can act in the legislative field only under delegations of authority from Congress. The fault lies with the Congress, or

perhaps ultimately with the people, for sending to Congress men who will vote for social and economic measures which usurp the powers of states over their internal and domestic matters.

Unless America wants a strong central government controlled from Washington and that necessarily by bureaus, her Congress must be required to confine regulations governing commerce to goods in transit, and return the control of manufacturing back to the states. It is a question as to whether the people prefer local self-government or centralized bureaucracy. The can have either. The Congress can give them either. It is their Congress.

19. The People Change Their Government

Is it too hard or too easy to amend the Constitution?

There have been over 3000 joint resolutions introduced in the Congress calling for amendments but less than 30 of these have been adopted by the necessary two-thirds vote of both houses, and only 21 have been ratified by the states.

The first ten amendments, known as the Bill of Rights, were all adopted within two years of the original acceptance of the Constitution. Eight of the original states adopted the Constitution only after receiving positive assurances that a Bill of Rights would be proposed immediately.

The 11th amendment concerning the judicial power, and the 12th governing the mode of electing the President were adopted to correct deficiencies in the original document. Then for 61 years no amendments were ratified. The 13th 14th and 15th grew out of the political turmoil and insecurity of the Civil War and were all passed within about 5 years. Then from 1870 until 1913, a period of 43 years, there were no additional amendments.

The 16th which allows a Federal income tax, and the 17th which provides for the direct election of senators both were declared in force in 1913. The 18th or National Prohibition Amendment went into effect in 1920 and was repealed by the 21st in 1933. the 19th amendment giving women the right to vote was ratified in 1919 and the 20th or “lame-duck” amendment gained the force of law in 1933. Amendments have been born in periods of strife and crisis.

Proposals to amend the Constitution must be passed by a two-thirds vote of both houses of Congress and then be ratified by the legislatures of three-fourths of the states or by conventions called for that purpose in three-fourths of the states. The 21st amendment is the only one that has ever been submitted to conventions in the states, and the Utah convention was the 36th to ratify it. All other amendments have been submitted by the Congress to legislatures of the several states.

Congress is required to call a national convention for the purpose of proposing amendments, if two-thirds of the state legislatures request such a convention. Amendments so proposed would have to be submitted to the legislatures or conventions in the states for their ratification on the same basis as though they had been proposed by the Congress. this procedure has never been used as yet. All amendments have been proposed by the Congress.

A situation might arise in which all of the states would have to ratify a proposed amendment before it could go into effect. This is because no state, without its consent, shall be deprived of its equal suffrage in the Senate.

The only proposal now before the states is the child-labor amendment. This was submitted in 1924 and provides that the Congress shall have power “to limit, regulate and prohibit the labor of persons under 18 years of age.”

Recent liberal Supreme court rulings have done away with much of the argument that could be used in favor of this amendment.

The fact that 150 amendments have been presented to the Congress for every one that has been finally accepted by the states has led some people to the conclusion that the procedure governing amendments is too difficult. On the other hand it can be said with equal logic that the procedure is too easy, otherwise either the 18th or the 21st amendments would never have been adopted, for one repeals the other.

The Constitution is the supreme law of the land; it is the permanent will of the people. It is above the enactments of the Congress. They express only the will of the majority of the people for the time being. Because of the nature of constitutions, it follows that the great fundamental rights of the people are preserved by them. These rights cannot be whittled away by laws passed by a temporary majority. It is in the interest of the people to make it difficult to override these rights and freedoms. the easier it is to amend a constitution the easier it will be for the rights of the people to be lost in times of war or of other emergencies.

On the other hand, if the basic law of the land cannot be altered to provide for changing social, economic and industrial conditions, it does not meet the needs of the people. One of the grave defects of the Articles of Confederation was that they could be changed only with the unanimous consent of the 13 colonies. From a practical standpoint this was impossible of achievement.

The will of two-thirds or the Congress and three-fourths of the states seems a reasonable restraint on majority rule. It is a safe guarantee of the rights of the people. Social and industrial changes can be provided for when the people really desire it. the

civil War amendments clearly illustrate that in times of need and crisis, the will of the people can be incorporated into the Constitution with speed and order.

The Constitution is neither too hard nor too easy to amend. It is just right.

20. It Is A Rising Sun

“The chair recognizes the gentleman from Pennsylvania, the Honorable Benjamin Franklin.”

It is the 17th of September in 1787, and the venerable Franklin at the age of 81 years has arisen to give his final benediction to that document which the delegates are about to sign, the Constitution of the United States of America.

“Sir,” began Franklin, addressing himself to George Washington, “for four months I have been observing that picture painted on the high arch of your chair. More than anyone in this chamber I have gazed at carvings and paintings of artists of all lands. In the galleries and salons of England and France I have seen innumerable attempts of artists to depict that greatest of planets, the sun. Artists have always found it difficult to distinguish a rising from a setting sun. I have often in the course of these sessions, and vicissitudes of my hopes and fears as to its issue, looked at that sun behind the president of this convention without being able to tell whether it was rising or setting. But now at length I have the happiness to know that it is a rising sun and not a setting sun.”

It was the great English Prime Minister Gladstone who said that “the American constitution is the most powerful work ever struck off at a given time by the brain and purpose of man.” In the sense that this great document was all written by one convention, Gladstone is correct. But the principles established and the freedoms guaranteed int he Constitution were the outgrowth of over 700 years of struggle by English freemen. Every phrase, word and letter was sanctified by the shedding of the blood of those who loved freedom and right more than life. The constitution was the crowning capstone of all the common law.

But the struggle to assure freedom in this land did not cease with the framing and adoption of the Constitution. It has been amended 21 times since. And there are today many grave problems facing the people who must preserve the Constitution, if freedom is to remain with us.

1–The people must insist that all of their rights and privileges which are curtailed by the prosecution of a total war be returned to them in their entirety as soon as peace is established.

2–The people must determine whether they want the federal government to continue to regulate their whole social and economic existence from Washington under the guise of regulating interstate commerce, or whether they want the control of their domestic and internal affairs returned to their local state governments. Federal regulation will be by impersonal bureaus. Local control will be by the people themselves, with their own interest at heart, and with a knowledge of the personal problems confronting them.

3–The people must determine whether they want their three departments of government to act independently in their proper spheres, or whether the congress shall continue to delegate law making powers to the president, and judicial powers to boards and bureaus.

4–The people must choose whether they want the power of the executive department restricted, so that he will be on a par with the Congress and the courts instead of superior to them. The chief means on doing this would be to restrict the president to one term only.

5–The people must choose between continuing to elect a president by the archaic Electoral College, the reason for the adoption of which has ceased, or whether he shall be elected by the popular vote of the people themselves.

6–The people must require their Congress to take its rightful place in national government, exercise a just control over the executive, and shake itself free from control by pressure groups.

7–The people must choose wise men who are imbued with the cause of liberty and not overcome by the spirit of party to represent them in all governmental positions.

8–The people must require their government to get out of debt. In 1796 George Washington told his countrymen in his farewell address that the government should avoid “the accumulation of debt, not only by shunning occasions of expense, but by vigorous exertions in time of peace to discharge the debts which unavoidable wars may have occasioned, not ungenerously throwing upon posterity the burden which we ourselves ought to bear.”

9–The people must learn their rights and resolve above all else to preserve them inviolate.

10–If the people will do all these things, and the kindred things that are related to them, they will preserve for themselves those freedoms that their progenitors have given them and they will perpetuate that kind of society in which social and economic betterment will prevail.

11–The constitutional sun is rising, and it has not reached its zenith, nor will it, so long as the love of freedom is sufficiently dear that men will sacrifice their all for it. The people must love freedom more than they love money. The cause is just. The god of freedom has approved. the even is in the hands of the people.