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THE CONSTITUTION AND THE TASKS AHEAD*

CHARLES MCKINLEY

Reed College

A resurgent conservatism rules the day in the United States not only in public affairs but also in political speculation. Frightened by the uneasy ghost of the barbarism that was embodied in German Nazism and Italian Fascism and by the spread of Russian-spawned totalitarianism, political speculation in this and other democratic countries now shrinks from the hazard inherent in a rationalistic effort to remold the world of public affairs. Inquiry turns to the adoration of our inheritance, to the discovery of neglected or undervalued virtues in the institutions as molded by our forebears, and to the wise prevision which they, in simpler crisis times, expressed in their statesmanship.

My own fundamental orientation toward government developed in the "progressive" decade before mankind's applecart was sharply tilted, if not completely upset, by the First World War. It rested upon an act of preference for a democratic, freely thinking, and freely associating society. It therefore shared something of the "divine discontent" felt by all political innovators, to whom the wisdom of the ancestors always has seemed incomplete and often inadequate to meet the demands of a constantly changing society. The new conservatism thus comes as a healthy stimulus to reassessment. In recent months I have been trying to make such a reevaluation of my views concerning the American constitutional system and its adequacy, as it has evolved since 1910, for meeting the needs not only of our own people, but of the other nations whose fortunes are willy-nilly joined to ours. A special spur has been provided by this recent declaration of one of our most respected and learned colleagues: "I believe," he asserts, "that the government of the United States under the Constitution, is probably the greatest achievement of the entire human race up to now in the construction of a political system that will provide strong and active government for every national

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and local need and emergency, and at the same time ensure a maximum attainable personal liberty and popular control over what government does."¹

This appraisal by William Anderson, whose judgment I have learned to value most highly, is sharply at variance with the conclusions which I had formed at the height of the Progressive period, about 45 years ago. I believed then that the American constitutional system, despite its modification by the growth of parties, could not, without drastic revision, be made to respond adequately and responsibly to the urgent requirements of American society. Because of the courts' constricting views of both national and state powers, extensive revision seemed necessary to enable our federal system to grapple successfully with national questions. Moreover, I was convinced that the allocation of powers between the organs of national government, with their many checks and balances, often doomed us to paralysis when decisiveness was essential; that instead of providing us with what Beard in his later conservative days was to characterize as a scheme of "dynamic equilibrium," it encouraged dynamic *disequilibrium* in the social order. In this mood, searching comparative experience for models toward which the American Constitution might be remolded, I thought the basic answers were to be found in the parliamentary systems of Britain and the self-governing dominions.

Those were days when the faith in the power of reason to adapt political institutions to men's needs was still bright. The influence of John Stuart Mill with his emphasis on the rational pursuit of the ideally best form of government was widespread. Burke's historical pessimism, with its panegyric on the virtues of inherited ways and prejudices, had slight appeal; it had not yet been reinforced by the new views of human nature and of culture soon to be voiced by the behaviorists, the Freudians, the sociologists, and the cultural anthropologists. What seemed very clear was the urgent need to find means to ameliorate the pressing economic, social, and political evils that had been generated by the post-Civil War industrialization of America and its accompanying urbanization. There was, moreover, a growing belief, expressed by the many innovations in city charters and state constitutions and statutes, that modifications in the machinery of government *were* attainable and *could* inaugurate a new era of genuinely democratic government. This point of view was to be voiced on the broadest scale by the Bull Moose convention of 1912 in its call for an easier method of amending the Constitution

¹ William Anderson, *The Nation and the States, Rivals or Partners?* (Minneapolis, 1955), p. xi.

so as to adapt our fundamental law "progressively to the changing needs of the people."

Looking back over the main constitutional developments of the last 45 years I have tried to see whether there are any valid remnants of those youthful convictions. It is clear that the American Constitution of 1955 is not identical with that of 1910. The psychological barriers against formal constitutional amendment which then seemed nearly insuperable were breached within three years after that date. The 16th and 17th Amendments gave us a new and fundamental fiscal resource for collective purposes and a greatly changed Senate from which the salty tides of popular opinion could no longer be filtered out by the often corrupt processes of indirect election. The deification of the formal document which had equated amendment with sacrilege seemed ending. Within a few years two more changes were made, and one of them swiftly completed the expansion of the political rights of women. A dozen years later came the depression-induced amendment which ended the "lame duck" Congresses and shortened the period between the election and installation of the President. How urgently the latter provision was needed received full demonstration in the drift toward economic chaos during the constitutional paralysis of executive leadership from November, 1932 to March, 1933.

Emotions generated by the Second World War wrought the latest formal constitutional change and provided the generative force which nearly sent the proposed Bricker amendment to the states for ratification. But the 22nd Amendment, unlike the earlier 20th-century changes, was not an *innovative* modification of constitutional powers. It restored the older constitution of custom, unbroken to 1940, which denied the electorate the right to select the same President for more than two terms. So, too, the Bricker amendment, which almost passed the Senate, was aimed at the status quo ante 1910 or, in some respects, 1787. It would enshrine in holy parchment a conception of federalism relating to the impact of foreign relations upon the distribution of national and state powers practiced under the Articles of Confederation, while simultaneously removing from presidential jurisdiction the power of making international executive agreements, exercised, with increasing frequency, almost since the beginning of American nationhood.

The 22nd Amendment and its Bricker consort, still waiting in the Senate lobby for a second try, are both antipathetic reflections of one of our two most significant constitutional developments of the past half-century. This is the great growth of presidential power. Though the popular tribune notion, with its matching assertion of presidential independence, dates from Jackson's time, the great growth in the powers

of our chief executive parallels in time the comparable phenomena of expanding executive authority among the parliamentary democracies of the West. It began with the first Roosevelt, and while there have been subsequent periods of executive lassitude, there seems general agreement in our profession that, despite the 20th-century conservatives' distrust of presidential power, we are most unlikely again to experience such a hiatus in presidential influence on domestic and international policy as that of the period between Lincoln and "T. R." Conservative incumbents of this office may yearn to sit in the cool of the White House cellar and count apples while Congress attends to the few laws desired by the leaders of "private enterprise," but there is no prospect of a return to the supposititious world of Calvin Coolidge. The electorate, and in particular the urban sector whose numerical dominance over the rural continually increases, are not likely to permit the holder of this high office to desert his leadership role in public policy with which it is now identified. It is they, and particularly the metropolitan voters, who tend to decide presidential elections. This office, unlike the Senate and the House, affords at present their best chance for effective representation in public policy. This peculiarity is not found in parliamentary systems, whose ministries and parliaments together mirror with policy sensitivity the going schemes of the constituency representation.

In appraising, therefore, the significance of the establishment of the office of the President as the principal vehicle for the crystallization of public opinion into governmental policy, we must note that though this has, in one important respect, increased the prospects of responsible democratic government in the United States, it has at the same time set the stage for increasing and continuing friction between Congress and the President.

This friction cannot be rationalized by the old argument of the need either for special class representation or for more delay to prevent precipitancy. Even though recent evidence indicates greater party cohesion in congressional voting than has heretofore been assumed, the party tie to the Chief Executive is still too weak a bond to obviate the necessity for bi-partisan support if presidential leadership on major policy issues is to be effective. And of course no matter how strong this tie might become it is of no avail, and could be a positive impediment to the requisites of governance, when as in 1910, 1918, 1930, 1946, and 1954 the mid-term election produces a Congress dominated in one or both houses by the opposite party. Frequently since 1938 a bi-partisan majority, reflecting the voting dominance of rural and small city areas led by an urban business minority, has carried the major policy decisions in opposition to presidential leadership in a Congress bearing the same

party stamp as the President. This situation is likely to become more frequent, for the drift of population toward metropolitan regions continues, and the impediments to the revision of congressional electoral areas seems unremediable—permanently frozen into the Constitution, in the case of the Senate, and deeply entrenched in state constitutions and hallowed state legislative apportionment practices in the case of the House. Only in case of war or grave economic disaster, when Presidents may take on messianic attributes and assume or are clothed with dictatorial powers, will presidential leadership be consistently accepted by the Congress. Even in such critical times this acceptance is far from complete, as the stories of price control and of taxation during the Second World War bear witness.

It is an ironic fact that great presidential leadership in such critical times not only appears to breach, but in fact must at times ignore, constitutional limitations in order to serve the nation effectively. And the price we have paid for these essential services, tinged as they have often been with the taint of unconstitutionality or illegality, has been a revulsion of public opinion which has denigrated both the office and its occupant. The post-Civil War consequence of Lincoln's war leadership was visited upon the head of Andrew Johnson. It was expressed for many years in the disparagement of the presidency and in the dominance of irresponsible Congresses. More expressive of this post-Civil War mood than young Woodrow Wilson's iconoclastic study of *Congressional Government* was William Lockwood's book, published one year earlier (1884), bearing the significant title, *The Abolition of the Presidency*.

The penalty for Woodrow Wilson's leadership during the First World War was not only his subsequent repudiation by the Senate enforced by the constitutional minority, but a two-year stalemate during which the world, facing the need to organize itself internationally, drifted and extemporized until our organs of national will could recover from their paralysis—and by that time a golden opportunity had been lost.

But the price also included a postwar glorification of presidential attributes devoid of leadership talent or intent and the expression of this mood by the selection of a President whose capacities, character, and vigor were patently unequal to the demands upon that office, even in a period when the yearning for "normalcy" and the disparagement of government called for a minimum of collective action.

The aftermath of the Great Depression-Second World War crisis period is so close to us and differs so markedly from earlier periods of "let-down" that I hesitate to attempt its evaluation upon the presidential situation. The desire for relaxation from governmental interference certainly followed the familiar pattern, but respite from crisis was very

brief. The sky was quickly overcast by the march of Communist conquest, the race for atomic weapons, and the eruption of many small wars in one of which we again became the major participant. Though filled with anxiety, we have been determined to "eat our cake" as well as throw it away. We want a presidential leader who will show us how to do both. He must keep us out of war but he must not appease the Communists. He must deal skillfully with other nations, but he must fire his Secretary of State and his diplomatic staff whenever they are actively disliked by a minority of senators. He must be a good Commander-in-Chief but he must not remove a politicking general who opposes his foreign policy or misconstrues his military directives. He must keep silent when senators of his own party, even his own Senate leader, set up their own foreign offices in competition with or in opposition to his Department of State. The momentum behind the Bricker amendment has been temporarily stayed, but if it revives with a small increase in strength, we may yet see transferred to the Congress or to the states much of the responsibility for shaping our engagements with other nations.

Yet those who share my own judgment that the elevation of the office of the President to the first position of leadership has been essential to our quest for a more responsible democratic government, would gravely err if they should write down the periodic reactions against presidential powers as wholly without justification. Many political scientists, approving the leadership function by the Presidents of the last 20 years, in peace and in war, seem to fall into that myopia displayed by Harry Hopkins as he observed the differences in the operation of the presidency and the British prime ministership during the famous battleship conference that brought forth the Atlantic Charter. As Sherwood reports, the admiring Hopkins "remarked on the fact that whereas Roosevelt was completely on his own, subject only to the advice of his immediate and self-selected entourage, which advice he could accept and reject, Churchill was constantly reporting to and consulting the War Cabinet in London, addressing his communications to the Lord Privy Seal, who was then Clement Atlee." What Hopkins did not seem to sense was the relative political isolation and incomplete responsibility, and therefore contingent political weakness, in the situation of the President, because, unlike the British chief executive, he could not count on the explicit, assured backing of a body comparable to the British War Cabinet, able to speak as the united mouthpiece for all party groups within Parliament and the British nation.

There is a sense, as I have already noted, in which one man occupying a national office set apart as the only post on which the entire electorate may cast its ballot, becomes the best representative of the nation.

But this is nevertheless a precarious relationship. There is a deep-seated popular suspicion of the possession by any one man of the fundamental power of law-making or the power to bind us with obligations which may commit our lives and everything we hold dear to the catastrophe of war. To be sure, this attitude is historically identified with the status of irresponsible kingship, or its modern dictatorial counterpart. The complementary history of representative government, on the other hand, has been positively identified with multiple-membered bodies, tied by electoral processes so as to express therein the diverse interests of all significant social groups constituting the civic electorate of the polity. True, this representative relationship differs from that of pure agency though sharing the agency characteristic of the right of ultimate dismissal if the represented are sufficiently dissatisfied. It has been suggested, however, that given a democratic electoral process the presidency provides a more direct, more unified, more enterprising partial substitute for the representative function in the government of a far-flung *federal* system than does Congress. So long as Congress is actually misrepresentative in composition, or, as so often in our bicameral history, is split into two politically hostile corporate groups which either fail to reach a consensus or find agreement through bargains that greatly distort the representative process, it is hard to deny the force of this assertion.

Yet there are other objections to an institutional situation which compels primary reliance upon the President or any other single official independent in tenure of the multiple-membered organs of law-making for the basic overall representative function in a democratic nation. One man as a single psycho-physical organism has deep-seated habit and value preferences which regardless of his conscious thinking and willing processes will incline him in particular directions. Every man who reaches such eminence possesses a "political" character structure—the resultant of a configuration of political attitudes which interpenetrate and which incline his values and judgment in particular directions. But even with all his tendencies toward inner conflict and ambivalence no single personality can be an adequate substitute for a properly constituted multi-member group in the performance of the primary representative process. To bring to the surface the varied and often conflicting social interests of a heterogeneous electorate a multi-membered body is inherently superior, possessing as it does its own automatic checks and balances—provided it operates in the free market of public discussion and association and provided also that it has its *own overt integrating leadership* which stands directly exposed and accountable before the whole nation for the results of its decisions.

The American presidency, through its independent and fixed tenure

and its independent constitutional prerogatives, oscillates from unlimited legislative power in times of great crisis when Congress and the courts are frightened, to frustration or impotence when tension is over, retaining only such influence as may be exercised by the astute use of patronage, by special mass appeals over the heads of Congress to the voters, or by expansive presidential interpretations of legal authority, sometimes doubtfully possessed.

Nevertheless, the President as head of state at all times possesses potential regal attributes which limit criticism and compel a minimum of acquiescent deference. Even so great a man as Prime Minister Winston Churchill, in his relations with Franklin D. Roosevelt (so Hopkins assures us), guided his behavior by the deference due the head of state. Where criticism cannot go, irresponsibility may enter and error reign unrevealed. This aspect of the presidential office has slight importance in tranquil times, but in crisis epochs, particularly those of an international kind where the President operates also as the molder of world policy, it may, without effective public or congressional debate or understanding, decide the destiny of the human race. Passing over recent illustrations and reverting to difficult but less perilous times, we recall that twice in our relations with Mexico, President Wilson, whose temperamental horror of war has been well documented, led us to the brink of full-scale conflict in the pursuit of tortuous policies intended to determine the internal leadership of Mexican politics. These policies, as Professor Link's studies show, he failed candidly to explain either to the Congress or to the public. This royal trait of the presidential office is rendered all the more significant by the absence from our system of any method for institutionalizing a responsible opposition party leadership, or for producing a cabinet personnel or practice designed to assure the refinement of presidential judgment on the anvil of informed and sensitive political discussion.

The President may and often does select his confidants on high public policy on purely *personal* grounds. *On whom he leans may be a matter of sheerest accident*, though of the greatest potential political consequence. High policy advice may lurk within story-telling, poker-playing companionship or a speech-drafting entourage. A Wilson may permit a monopoly of his innermost thoughts by a sympathetic and astute Colonel House, or a Roosevelt may find shrewd, bold, and unselfish advice from a hero-worshipping Hopkins, but a Harding or a Grant may build the decision-making process upon ill-informed or untrustworthy private friendships.

How thoroughly out of touch with congressional opinion and attitudes presidential decisions made under these personal or private influences

can become was dramatized in 1944 by the spectacular repudiation of President F. D. Roosevelt's tax veto by the Senate and by his own theretofore faithful spokesman and Senate leader whose advice he had brushed aside. The experience of Senator Harry Truman when elevated to the presidency illustrates the fact that even "one of the boys" may quickly find that his new and different sense of responsibility and the isolation imposed by the "separation of powers" have placed him outside the immunities and good fellowship with which the Senate, as a corporate group, cushions conflicts within its own circle.

These are some of the adverse factors that still cling to the office of the President in the role of legislative leadership for the nation despite the augmentation of that role in the past 40 years.

But what of the Congress? Direct election of senators and changes in the political culture of the states have eroded the tight plutocratic, oligarchical control that ruled in the first decade of the present century. Cannonism in the House disappeared in 1910-11. Yet the displacement of these concentrations of power by dispersed centers of influence substituted for one form of irresponsibility another and more anarchic form. I can but enumerate, without reciting evidence for them, certain basic conclusions: (1) Despite the exhortation of two committees set up by this Association, those admonitions contained in the report of the Joint Congressional Committee on Reorganization and in the more limited aspirations implicit in the Act of 1946, and despite comparable suggestions for reform by a galaxy of informed critics, the houses of Congress have not acquired, either separately or in union, institutions of responsible collective legislative leadership, nor are they willing consistently to accept that of the President. Seniority, particular interests, and localism rule where party has abdicated. (2) In the control and direction of the work of the executive department, congressional influence is even more completely dispersed over administrative personnel, programs, and even detailed operating decisions not only among the chairmen of committees or sub-committees but also among individual congressmen. Here the Constitution's requirement for Senate approval of presidential appointments, whose ill-consequences were clearly foretold by John Adams and historically demonstrated by Joseph Harris' recent study, adds built-in impediments to the integrated control of "Big Administration." Great as has been the headway since 1910 in reducing the spoils system and improving the devices for merit measurement, the disintegrating and capricious influences that play upon executive agencies not only discourage development of a permanent top-level managerial corps but rob departmental and presidential management of essential coordinating influence, all plans for administrative reorganization and

central staffing to the contrary notwithstanding. Herman Somer's recent brilliant essay on this matter reminds me of the large element of truth in the second part of the satiric remark ascribed to Charles Beard to the effect that American constitutional evolution had transferred the law-making function to the President while Congress had become the chief executive. (3) Checks and balances within the bicameral system and between Congress and the executive give to the American republic many of the characteristics so widely ascribed to France. Organs of national will are frequently paralyzed when decision and action are important. With regard to many questions of national and international policy, we seem often to approximate that 18th-century ideal expressed by Hamilton when, in defending the veto power, he expressed the belief that "every institution calculated to restrain the excess of law-making, and to *keep things in the same state in which they happen to be at any given period*, is much more likely to do good than harm. . . ."

Even that essential informal ingredient of democratic constitutions, the national political party, which the architects of the Constitution most feared, has undergone only slight development toward the kind of self-discipline, the improved prestige, the popular support, and the internal efficiency of management which are necessary for the workable adaptation of a check and balance system to the needs of government. The creation of a small permanent office by the national committees of the major parties since Al Smith's defeat is a gain. The use of research in the drafting of policy statements is laudable and was first copied by the Democrats from the Socialist party in 1916. But these improvements are miniscule. Our own Committee on Political Parties has fully documented the distance that must still be traversed before responsible parties become possible. Without commenting on its many proposals, or that of other advocates of increased party control over congressmen and congressional policy, I would express grave doubt of the efficacy of their exhortations in face of the obstacles to party government which are built into the present structure of the Constitution. Acts of will and conscious desire are of course essential to any deliberate reform. But a desire for and acts of will toward greater central party control and discipline are not likely to arise in the breasts of congressmen and senators or pressure group leaders so long as congressional terms of office and reelection prospects are, by constitutionally created provision, independent of the President or so long as there is no provision for a recognized leader of the opposition to play a continuous and effective role.

The most striking differences between the Constitution of 1910 and that of 1955 are the new allocation of powers between the nation and the states, and the freeing of both national and state legislatures from the

judicially constructed straitjacket of laissez-faire economic limitations. What Professor Corwin has so aptly called the "Constitutional Revolution, Ltd." worked by the Supreme Court in 1937 and the years immediately following erased the constitutional impediments which Frank Goodnow's summary of 1911 had soberly listed as lying athwart the path of necessary social reform. The Court on the one hand has "out-Marshalled" Marshall in its expansion of the scope of the commerce, taxing, and spending clauses that endow Congress with powers, and, on the other, has freed both state and national legislatures from the major limitations on economic regulation which the old Court had found lurking within the phrases of the 5th and 14th Amendments. In the economic sphere the doctrine of limited powers seems pretty well erased.

With respect to federalism, no longer does the theory of dual federalism create a no-man's land of legal impotence over economic problems. Cooperative federalism has judicially and administratively replaced competing federalism. Congress and the President may attempt to deal with any economic and social problems of national importance, despite the 10th Amendment. The state legislatures, if interested in giving reality to the experimental opportunity inhering in federalism, are now free to act. Judicial review as it was exercised by the Supreme Court in 1910 and down to 1937 has thus lost its major sting.

Moreover the principle of review does remain to give support to the exercise of precious civil liberties within the 48 states which the Court discovered, since the mid-twenties, to inhere within the seminal phrases of the 14th Amendment. Here limited government still reigns, and reigns more fully than ever before in our history. On the other hand, the Court has not yet shown comparable jealousy for guaranteeing the exercise of these personal rights as against the *national* government.

Finally, the nation's legal right to play such a role in the society of nations as the President and Senate may decide has also been so generously construed by the Court that what remains to be most prayed for is the national capacity to make up our minds wisely.

Thus the constitutional power to govern, and its allocation within our federal system as re-defined by the Supreme Court, meets today most of the criticisms leveled in its direction by those who shared my predilections in the hopefully discontented days of 1910.

But in this third quarter of the 20th century the challenges to self-government are not exactly like those of 40-odd years ago. The world of 1910 is far away. Two global wars, a most devastating and prolonged economic depression, the revival and rapid spread of dictatorship in Europe and Asia, utilizing new scientifically refined savagery in peace

as well as in war, have intervened. In the wake of these cataclysmic events we in America find ourselves snatched from our intra-continental self-sufficiency and self-absorption and not only thrown into the main stream of world events but placed at the head of one of the two great armed camps into which the world is now divided. We gird ourselves and our allies for total atomic destruction lest we be totally destroyed. In this interim of 40 years our faith in "inevitable progress" has been shattered. We ought now to realize that if we are to retain a democratic social order and remove the red scourge of war and mass destruction we shall have to earn these essentials of human welfare by the sweat of our intelligence, by our moral sensitivity and effectiveness, and by our capacity for *sustained* social and political cooperation not only among ourselves but with other peoples.

Nor do we any longer take it for granted that we shall easily command the physical resources for the tasks that lie ahead and the full life we crave. The war-revealed critical shortages in our continental supplies of strategic minerals and the approaching depletion of high quality deposits of some of our most essential base minerals—such as iron, lead, copper, and bauxite ores—create a new anxiety lest the physical base for our increasingly mechanized industrial civilization fail us. Demands upon our soil and water resources when measured by the needs of a rapidly increasing population here and in the rest of the world forecast the necessity for careful and discriminating use. It is not necessary to accept as certain the estimates of Harrison Brown, in his brilliant summation of the physical basis for prospective industrialized world society, to conclude nevertheless that as never before in modern times, social controls and public initiative in future years will have systematically to guide, modify, or supplement private decisions in resource use. Already caught up in this tendency, we shall find it necessary increasingly to use political means to assure the continued availability at reasonable cost of the material foundations for continued high living standards and for the extravagantly hungry demands of defense or war.

And finally, the Great Depression has left a heritage of conviction, shared by every consequential political party, that we must not permit its repetition. Though there may be slips between intent and performance, conservatives, liberals, and radicals, farmers and city folk seem united in the affirmation that governmental instruments must be used to halt a depression and to maintain a high level of employment.

Thus it is a very different world from that of 1910 against which we must measure the adequacy of the democratic political devices and ideas mankind has slowly and painfully wrought for social action. Nor will *this world of 1955* stand still for long. Robert Oppenheimer has

eloquently characterized the heart of our situation. What confronts the human race, he says, "is the prevalence of newness, the changing scale and scope of change itself, so that the world alters as we walk in it, so that the years of man's life measure not some small growth or rearrangement or moderation of what he learned in childhood, but a great upheaval." Yet the changing world of which Oppenheimer speaks, which moves with such acceleration, is principally the world of scientific and technical knowledge, of the artifacts, the work and other interpersonal relationships and of the economic and social institutions which rise to serve them. The world of *political* institutions, ideas, and practices, and of public convictions about such matters, born long ago of human needs and aspirations, waits far behind. We see clearly a similar situation for past epochs in Western civilization when, as in the case of the Greek city states and the Roman republic, constitutional adaptation was too slight and too slow to prevent political catastrophe. But unlike the ancient Greeks and Romans *we* possess the *technical means* of mass communication, transportation, and universal education so essential to the operative adaptation of democratic government to change.

Yet our emotional attachment to accustomed ways of operating democratic government may, by inhibiting prompt adaptation, rob us of the institutional tools with which to preserve the basic human values implicit in the democratic faith. We see this pretty clearly for example in the lag between the institutions of local government and the responsible fulfillment of the complex public tasks required by the new metropolitan communities. Nevertheless, in that sphere we have been at least able to talk freely, to criticize, and to propose without incurring undue obloquy. Not so in the realm of national constitutional problems, where, as Charles Merriam noted in the concluding essay of the 1933 landmark survey on "Recent Social Trends," proposals for change of the constitution "have been identified with treason to the state."

I know that many of my more learned colleagues in this Association believe that in the development and practice of a science of politics we are obligated only to observe accurately, describe, and generalize. Despite this view, my youthful convictions on this score are firm. The value of any science is to be found in its ultimate impact upon human welfare. I therefore believe we must search for clues from our own history and from comparative experience that may be helpful in the institutional adaptations most likely to resolve the problems of governance that lie ahead. But I have learned that the process of suitable constitutional adaptation is a much more difficult and uncertain thing than seemed to be true in 1910. I have greater appreciation for the significance of the total social matrix to the operation of formal constitutions and informal polit-

ical practices. I would acknowledge that element of truth in both Burke and Hume which stresses the constricting allegiance of historical forces upon the mental commitments of men. Yet I do *not* believe that we must remain *wholly the captives of our past*, or the creatures of those occasional changes that come when we are moved from our ideological moorings by catastrophic chance.

There is *some* freedom of choice, *some* opportunity for reasoned thought and logic to guide our collective conduct, despite the large influence of the instinctive, the non-rational, and the habitual. The new awareness of these latter motivations in our behavior may even free us to direct more effectively the strategies for our own adaptations. But this process cannot proceed with promise unless it begins by vigorous discussion, based upon a recognition of the need for constitutional modification.

If some miracle were to alter the many cultural factors that now deter many of our wisest, most talented, and most trustworthy men and women from enlisting in the transcendent tasks of statecraft that challenge us, such leadership would still be frustrated and discouraged by the fragmentization of responsibility and power inherent in our constitutionally-induced political practices. If we are to get and to keep the quality of statesmanship the times require, it will be necessary to make such revisions in the relationships and composition of the organs of national government as will increase their integration and their representativeness. If we are to win through to complex and distant goals, there must also be changes to assure promptness in decision-making when urgency presses, as well as the development of wide and sustained public understanding. As a people we shall need, as never before, the capacity for intelligent self-restraint of many kinds. Can such constitutional rearrangements be combined with democratic control and with the preservation of freedom of speech, press, and association, and of all the galaxy of precious individual choices by which the power to govern must be cushioned to make it genuinely accountable? The age-old difficulty that powers granted may be abused lies before us in an acute form.

Yet even as we hang back, afraid to bring together in some closer responsible relationship our President and the houses of Congress, power is already being gravely abused. No other contemporary mature democracy has witnessed such inroads upon its citizens' personal liberties of speech, association, and due process as have we during the trying postwar years. Our checks and balances, which split power and dissipate responsibility, have not spared us from the humiliations and terrors of the rankest invasions of privacy, of rights to employment (private as

well as public), of the incitation of son against parent, or brother against brother, or of pillory before the public—so that our friends slink away lest they too be similarly punished. Where else among the Western democracies is there a parallel to that phenomenon known as McCarthyism? Is our danger from either the internal or external menace of communism so much greater than that of the Scandinavian democracies, or France, or Britain, or of our friendly neighbor to the north, or her sister-dominions in the south seas? It is patently not so. Shall we explain this lack of nerve by some peculiar personality traits that afflict us? I do not believe it. I do think that there are elements in our pioneer traditions which make for intolerance and that these come to the fore when circumstances favor. But the favoring circumstances for our present orgy of unpatriotic patrioteering which has led to these evils seem to me in large degree traceable to the great diffusion of constitutional powers among so many centers of officialdom that power tends to be irresponsibly and abusively exercised. It is no inexplicable accident that a single senator was for years able to so terrorize his fellows as to set in motion a Gresham's law by which nearly all of them felt forced to match, in some degree, his appeal to our least decent impulses. His constitutional position frees him, whenever he wills, from the restraints of party and group ties. His constitutional immunities and his senatorial privilege of debate and committee membership permit him to assert, in such manner as to catch the headlines, any crime against anyone, and to do it day after day and month after month so long as he stays within the confines of his office. Any clever and callous senator can repeat McCarthy's performance in America in any time of great social anxiety, and such times may afflict us for the indefinite future. The only institutional check invented in democracies which can curb or minimize McCarthyism, a disease whose virus lies latent in all nationalistic societies, is that of full-fledged party responsibility. Handicapped by our constitutionally-induced separation and diffusion of power the brave steps taken toward responsible party government are still too short to reach the desired goal.

As we face the kaleidescope of civic choices which will constantly unroll before us, the quality of our decisions as voters and pressure group members and therefore of the collective civic judgment, hinges upon the quality of the discussion of public questions. The key roll, for most citizens, in this educative process, is played by *political* leaders. Issues will be imposed by events beyond any man's control. But the formulation and popularization of attitudes toward them and the wide dissemination of information about them are *major* functions of political leadership. But when the wills of political leaders are paralyzed and their

judgment corrupted by the mass hysterias which a single headline-hunting or radio-trumpeting demagogue can evoke, time is overdue to look from symptoms to causes. In that search the members of this Association carry the highest moral obligation.

Thus far our collectively-sponsored efforts have been of slight avail, partly because they have concentrated on institutional maladjustments and political practices, which are only the symptoms of more basic constitutional faults. Nor do I think that we have sought to discover, in the most likely comparative experiences, clues from other democratic systems which might provide the imaginative stimuli for adaptations within our own political and constitutional culture. We have particularly neglected, in our research, the constitutional and political experiences of the Canadian and Australian federal systems, though Louise Overacker, in her recent study of Australian federal parties, has revealed much new data which with further exploration might be of great assistance in such a quest.

I would emphasize especially the great potential value of comparative studies of Canada and the United States. We have but one thin comparative work reviewing, as entities, the Canadian and the American political systems, done over 30 years ago and chiefly from the standpoint of the constitutional lawyer. Yet in Canada are some of the most striking social and political parallels to our own society and experiences, even while there is much sharp contrast in basic constitutional arrangements. In the argument about possible parliamentary models for the United States, Great Britain is usually discounted because of its great social differences—its population homogeneity, its compactness, its absence of frontier influences, its inherited class distinctions, its mature labor movement, and its unitary character. But in Canada, outside of Quebec, social characteristics and culture closely resemble our own. Even the Quebec French Catholic culture group affords a political parallel since it, like our South, has developed a seemingly permanent attachment to only one of the major parties in national politics. From our borders came not only the early English-speaking settlers in Nova Scotia and Ontario, but a steady stream of settlers to the prairie provinces and the timbered slopes of the British Columbia mountains. Within the Dominion's continental domain are vast sectional differences with great variations in resources, sharp differences in climate, attitudes, and ways of life. Theirs also has been a history of conquering a wilderness, of seizing nature by the throat and possessing it with a similar disregard for strict legality and public ethics. Their task of creating a nation out of so much diversity and over so vast an area by means of a federal system of government has been a much more diffi-

cult one than ours, even making additional allowance for a start later by three-quarters of a century. Canadian social structure, and the tasks and problems of its government—making due allowance for differences of size, power, and world influence—closely resemble those of our own nation. Here is a situation seemingly made to order to test, so far as this term has any validity when applied to operating constitutional systems, the political and social consequences of a parliamentary federal system in comparison with our own presidential-congressional one.

Some surface indications stand out like gold nuggets as incitations to systematic exploration. Canadian political parties, for example, show many of the traits in nature and functioning to which we are accustomed in our own federal system. Thus, as the 19th century wore to a close, the differences in doctrine, as well as practice, between the Conservatives and the Liberals became as slight as between Republicans and Democrats. These similarities have continued. Yet party discipline in the Canadian Parliament has been even tighter than in Britain. When policy is set by the Prime Minister and his cabinet, his party in the Commons back him with their votes. The social explanation for the lack of sharp divergence between parties which we have come to accept in the United States holds also in Canada. Yet most of the key practices of parties in the processes of government differ fundamentally. Why is this so? We need far more careful *comparative* analysis even though much has recently been revealed by the scholarship of our Canadian colleagues—Brady, Corry, Dawson, Clokie, and Ward. If social structure is the primary determinant of political behavior, how did it happen that in Canada during the last world war the control of prices, particularly agricultural prices, was so much more successful than in the United States? Canada has a greater proportion of rural to urban voters than do we. How came it that Canada, with an economy bound to ours, handled her postwar inflation much more successfully than we did ours? Were there significant differences in the ways of mediating between group pressures in Canada, and were they related to differences in constitutional practice?

A third item suggestive of difference in political behavior induced by constitutional structure is the absence in Canada of our penchant for seeking professional military men as candidates for the highest posts in civilian leadership. Why do they escape this danger to civilian domination of public policy while we, almost alone of all the mature democracies, are continually confronted by its possibility? And finally, how account for the relative absence in Canada of that fearful, vindictive search for scapegoats on whom to vent disappointments over the errors, real and imagined, of national leaders in the late war and the fail-

ure to win an abiding peace and forestall the spread of communism?

I raise these queries as *prima facie* evidence, which careful comparative research might verify or disprove, that constitutional differences do produce differences of large importance in the political behavior of a people. I suspect that the relationships are often indirect, compounded of diverse habits in public expectations as well as the practices of specific political institutions. I believe that careful comparative analysis of Canadian and American politics would be valuable, not because we might be induced to "buy the Canadian model," but for the clues which might be forthcoming in devising modifications for our own constitutional system.

I think we urgently need also some intensive psychological-political studies of the tendencies inhering in the presidential office (surrounded as it is with its contradictory elements of independence and congressional check-mate), and of the leadership behavior of men holding this great office in crisis times. Why, for example, did Woodrow Wilson, whose lifetime of study of the American government gave him unrivalled knowledge of its history and structure, whose conceptions of presidential leadership were untainted by depreciation, fail so completely and at such tragic cost in the winning of the peace? Did the constitutional position of the presidency amplify his personal inclination to self-sufficiency? Did the separation of powers enhance the irreconcilability and irresponsibility of the senatorial opposition, while at the same time inflating the stubborn ego of the President? Did elements of constitutional structure exacerbate unsuitable traits of character on both sides of the contest in this whole tragic episode? Is the process of presidential colleague-ship and of advice-taking affected significantly by constitutionally-induced impulses or handicaps? Is there something in the nominating and election processes for this greatest office which tends to mistake personal eminence for great talents of political leadership? Behavior studies of the presidency should be matched by comparable analysis of the "Prime Ministers and Company"—Borden and Bennett, Laurier and King, Churchill and Atlee, and their ministerial associates. If we carefully combed the biographical literature of these men and their associates in politics we might discover whether the political relationships induced or impeded by constitutional structure and practice showed particular tendencies affecting (1) the quality of their training for political leadership or (2) the effectiveness with which leadership was expressed in reaching decisions, in educating the public, and in persuading the constitutional organs which express the national will. How do the differences in organizing and institutionalizing leadership of the opposition affect presidents *vis-à-vis* prime ministers? We

have numerous glib generalizations in the texts, but what does the process of interaction look like when examined in detail and what does it seem to produce in political behavior tendencies? Does it permit the correction of error by informed, cogent criticism or do decisions win acquiescence through default of responsible opposition leadership? These are a few of the questions upon which we need much more light before we may unseat hunch and intuition as determinants of some of the most important judgments about constitutional systems of government.

I find myself in 1955 still believing that constitutional structure is important in the democratic government of men, but less sure than in 1910 about how that importance will manifest itself. I am very much less sanguine about the free interchangeability of comparative institutions among peoples, even within the area of our Western culture. Despite the great improvements in the American constitutional scheme I am, at best, agnostic about Professor Anderson's eloquent statement of conviction. But to argue this has not been my purpose. Whatever its degree of perfection, it seems clear to me that our system should be markedly improved.

I believe that our own Association should authorize the creation of a committee and free it, despite the prospect of ensuing controversy, to explore carefully the character of such piecemeal amendments to our constitution as might adapt it more certainly to the tasks and needs which press upon us. Could a "package" of amendments and statutory changes be devised which would provide greater promise of responsible teamwork in the great decisions of public policy, and their fulfillment, than our institutions and practices now afford? What traditional attitudes and expectations of the electorate must also be replaced or modified if such legal and institutional revisions should succeed?

In closing, let me confess that to have watched the processes of government in the half-century since my youth, has wiped away a good many adolescent illusions about the ease and certainty of human self-mastery. It may be that all the constitutional contrivances mankind might invent will be of no avail in the effort to achieve peace and well-being for the human race—that man's modicum of rationality, wisdom, and self-control may not suffice. But that dire possibility does not foreclose the opportunity for victory. It should not palsy our effort to expand the role of reason, humane feeling, and collective self-control for these transcendent purposes. We, of all professions, have the greatest moral obligation to continue the unswerving enlistment of our minds and hearts in this grand enterprise.