Constitutional Government

John J. Parker
Senior United States Judge, Fourth Circuit

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Constitutional Law Commons

Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol44/iss1/3

This Article is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.
CONSTITUTIONAL GOVERNMENT*

JOHN J. PARKER**

I appreciate the invitation to celebrate with you the sesqui-
centennial of the signing of our great charter of government. Be-
cause of the controversy which has recently existed with respect
to certain constitutional questions, I wish to make it clear in the
beginning that nothing that I shall say has any reference to that
controversy. I intend to speak of the principles underlying the
Constitution and of their relationship to the progress of society;
and I trust that it may not appear unseemly for me to deal with
this subject. A judge, removed as he is from political conflict and
constantly required to study and apply constitutional principles,
should be in position to speak of them with some degree of under-
standing; and, on an occasion of this kind, it seems fitting that
he should speak on a subject which so nearly concerns the welfare
of the people whom he serves.

It has been said that one of the paradoxes of the law is that
"while it must be stable, it cannot stand still." This is but the
arresting statement of the conflict between stability and progress
everywhere present in human life. Bagehot, in his Physics and
Politics, has pointed out its application in national evolution. Law
which is essential to the life of the state is attained by primitive
man with great difficulty. But, once attained, it is difficult to
change. Behind it are massed all the forces of custom and of re-
ligion, and any change tends to destroy confidence in these bul-
walks of order. But without change there can be no progress;
and the problem is to change the law to conform to the changing
conditions of life without destroying the respect for law which is
the condition of national existence. Without change there is stag-
nation. Without law there is chaos.

The solution of the problem among more advanced peoples
is found in a system of legal principles, regarded as fundamental in
the life of the state, which are preserved inviolate while changes
are made in laws of less important character to meet changing con-
ditions. Such a system of principles is called the constitutional
law of the state. In nations like England with an unwritten con-

* An address delivered at the fifty-first annual meeting of the West Virginia
Bar Association, at White Sulphur Springs, West Virginia, on September 16,
1937.
** Senior United States Judge, Fourth Circuit, Charlotte, North Carolina.
stitution, these principles consist in the accepted standards by which sovereign power is exercised by those vested with authority. In nations like the United States, they are embodied in a written charter of government which constitutes the fundamental law of the land. The function of such a constitution is to give stability to the governmental institutions of the people while permitting legislation to meet the changing needs of their life. Without adequate provision for legislative change, a constitution would either arrest the nation’s growth or result in the destruction of its civilization. The wisdom of the framers of the Constitution of the United States is shown by the fact that they have embodied in that instrument only the fundamental principles of free government, leaving it to the various law making bodies of the people to apply these principles in terms of laws to meet the changing conditions of national life. My purpose is to speak, not of the specific provisions of our Constitution, but of the vital principles which it embodies and to show the importance of these principles amid the conditions in which we find ourselves.

The principles upon which the American government is founded, and which are the sum and substance of the Constitution, are three in number and together constitute the fundamental principles of democracy. Democracy, of course, is more than a form of government. It is a philosophy of life—a philosophy which finds reality and importance in the life of the individual and which postulates that institutions exist for men, and not men for institutions. America came into existence proclaiming this philosophy as her confession of faith. “‘We hold these truths to be self evident,’” says the Declaration of Independence, “‘that all men are created equal, that they are endowed by their Creator with certain unalienable 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.’” In these few words are embodied the three great principles of political democracy, upon which the fathers based our written Constitution—(1) the rights of the individual, (2) the sovereignty of the people, and (3) the supremacy of law based upon reason and justice. These principles are in no sense fortuitous or accidental; they inhere in the nature of free government. They must be interpreted in terms of laws and institutions to meet the needs of the times; but the principles themselves do not change. They are as fundamental as the laws
of nature or the laws of mathematics. Without them free government—political democracy—simply cannot exist.

The first of these principles is the recognition of the rights of the individual—of the rights of man as man—which he may assert even as against the state itself. This concept with the fathers was a very practical matter. It was obtained, not by any process of theoretical reasoning, but through hundreds of years of struggle and costly experience. Freedom of thought, freedom of speech, freedom of conscience—the right to be let alone by govern-ment so long as one was not disturbing his neighbors—the right to be secure in one’s person and habitation from unreasonable searches and seizures—the right not to be condemned for an act which had not been forbidden as a crime when it was committed—the right to public trial by a jury of one’s fellows and to be con-fronted by the accusing witness—the right not to be deprived of life, liberty or property but by the law of the land, the general law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial—these and other rights of which I need not speak in this presence had come to be regarded as the rights of the Englishman which he might assert against the power of the Crown. When we established our government here and looked to the people and not to a king as the source of power, we guaranteed these fundamental rights of the individual not merely against the power of the executive but against the entire power of the state, so that no public official, no legislative assembly, no popular majority might deny them to any individual, however poor, or humble or unpopular he might be. This, I think, was America’s greatest contribution to the science of government. Without it, the rights of the individual would be subject to the whim of majorities and the tyranny of the demagogue, and democ-raey would perish here just as it perished in Athens and in all of the democracies of old. With us power is derived from the people and popular majorities represent the people’s will; but we recog-nize that government must represent justice and righteousness as well as power; and we will not permit the power of the state to be used to do injustice to the individual—to deprive him of those fundamental rights which belong to him as a man.

There is nothing, however, in this principle or in the Constitu-tion which forbids the proper extension of governmental powers in furtherance of the general welfare. The individual liberty which the Constitution guarantees is liberty under law, not mere
freedom from restraint; and it is no violation of the constitutional principle that, with the increasing complexity of our social relationships, the powers of government should be extended into new fields and the freedom of action of the individual proportionately restrained. A business which is perfectly proper in a sparsely settled community may properly be forbidden as a public nuisance in a great city; and a regulation of trade or employment which would be insufferable among a simple agricultural people may be essential to their general welfare after they have developed industry and commerce on a large scale. The last half century has wrought an industrial and social revolution in the lives and habits of our people. Improved methods of transportation and communication, the invention of labor saving machinery, the adoption of new methods of corporate organization and financing—all of these have brought us face to face with new problems which call for greater regulation of national life by governmental power than the fathers ever dreamed of. Vast aggregations of capital have threatened a monopolization of industry with swollen fortunes for a few and economic serfdom for many. The tools with which labor works have passed into the hands of capital, and laboring men have suffered a loss of the sense of independence and security which was theirs in former days. Organization for the protection of their interests has resulted in industrial conflict, and shifts in industry have resulted in widespread unemployment. The ramifications of economic life have become so complex, that the misfortunes of one group of workers or producers may be the cause of nationwide calamity. Under such circumstances, it is idle to contend that the power of government should not be used for the proper regulation of economic life. Monopolies must be curbed. Unemployment must be relieved. Justice must be secured in the relations of capital and labor. Some measure of economic security must be provided by the state in the form of old age and unemployment insurance for those who are dependent upon industry which has come to have statewide significance. And conditions must be fostered which will provide for the healthy growth of industry and for the just division of the rewards of industry among those who are engaged in it. It is not my purpose to speak in detail of these and other governmental measures which the conditions of modern life demand. I mention them merely to say that such regulation on the part of government is not contrary to, but in accordance with, the spirit of individual liberty embodied in the Constitution.
CONSTITUTIONAL GOVERNMENT

It is unreasonable violation of the rights of the individual which is forbidden to government, not reasonable regulation of matters which have come to be matters of social concern and which affect the life and future of the whole people.

There is no danger to democracy so long as the state confines its activities to regulation of social relationships which affect the general welfare. The danger comes when the state attempts to regulate those matters which are primarily the concern of the individual and which only indirectly affect the welfare of others. Nothing that the individual does probably affects the life of society as deeply as his religious activity; and for many centuries the regulation of religion was regarded as a proper function of the state. After centuries of struggle and bloodshed, however, we have come to recognize that religion is primarily an individual matter and that the state should not interfere with it unless in its exercise a man makes a public nuisance of himself. The same thing is true of making a living. After the social aspects of employment have been regulated, so as to provide healthy industrial conditions, industry will produce more and those engaged in it will be happier, if the government allows every man to proceed in his own way so long as he does not injure his neighbors by so doing; and, in my humble judgment, there is no danger which threatens modern civilization that is comparable to the danger presented by the philosophy of the totalitarian state with its regimentation of life and its crushing of individual initiative and enterprise. I have for that statement no less an authority than Ortega, the great liberal philosopher and metaphysician of the University of Madrid. In his Revolt of the Masses, he says:

"This is the gravest danger that today threatens civilization; State intervention; the absorption of all spontaneous social effort by the State, that is to say, of spontaneous historical action, which in the long run sustains, nourishes, and impels human destinies. When the mass suffers any ill-fortune or simply feels some strong appetite, its great temptation is that permanent, sure possibility of obtaining everything—without effort, struggle, doubt, or risk—merely by touching a button and setting the mighty machine in motion. . . .

"The result of this tendency will be fatal. Spontaneous social action will be broken over and over again by State intervention; no new seed will be able to fructify. Society will have to live for the State, man for the governmental machine."
And as, after all, it is only a machine whose existence and maintenance depend on the vital supports around it, the State, after sucking out the very marrow of society, will be left bloodless, a skeleton, dead with that rusty death of machinery, more gruesome than the death of a living organism.

"Such was the lamentable fate of ancient civilization. No doubt the imperial State created by the Julii and the Claudii was an admirable machine, incomparably superior as a mere structure to the old republican State of the patrician families. But, by a curious coincidence, hardly had it reached full development when the social body began to decay."

Those who imagine that state absolutism is in the interest of even the economic welfare of the people, need only compare this country with the totalitarian states of Europe to see the refutation of their theories; but I shall not dwell upon this aspect of the matter. What I desire to call attention to is that the totalitarian economy has invariably meant the end of individual freedom. It is not merely that there is insufferable regulation of private affairs by public officials with all the hateful snooping and espionage which such regulation invariably entails, but that such a system inevitably leads to dictatorship and undermines the basic liberties, such as free speech and public trial, upon the importance of which all right thinking men are agreed. Without centralization of authority in some one with dictatorial powers, the planned economy of the totalitarian state will not work; and so, under the guise of necessity, the dictatorship is established. The state, to enforce its policies, must have the support of the press; and so a censorship is established and the freedom of the press goes overboard. Freedom of speech goes in the same way. Soon it is discovered that the church is interfering with state policy, and freedom of conscience goes. Then a purge of those deemed enemies of the state because not in sympathy with the rulers is deemed necessary, and public trial goes with the rest. It is not a mere matter of chance that there is not free speech, a free press, or a free pulpit in any of the totalitarian states of Europe, and that in many of them the administration of justice is a mere mockery.

There is need for us to remember that the state exists for man and not man for the state, that the ends of government are life and liberty and the pursuit of happiness, and that all three of these center in liberty, since, without liberty, there can be no real happiness and life is not worth the living.
The second great principle of democracy which the Constitution incorporates is the principle of popular sovereignty, not merely with respect to national, but also with respect to local affairs. This is the meaning of our federal system, with its dual sovereignty and dual citizenship, under which the people of the nation control matters of national concern and the people of the several states control local matters. The people of New York have no voice in things which are solely the concern of the people of California; and the people of Florida have nothing to do with the local government of New York. All, however, participate in the control of the federal government in which all are concerned. The adoption of this principle has enabled us to solve one of the great problems of history, i.e., how to combine the strength of the great state with the freedom of the small state. Great states always develop a more splendid civilization than small states and afford to their people greater opportunities for wealth and achievement. They are subject, however, to two fatal weaknesses. In the first place, the concentration of great power at the seat of government tends to create despotism and crush popular liberty. In the second place, it is practically impossible to make unified political power operative over a wide expanse of territory among different people with differing ideas and ideals. Small states, on the other hand, are more likely to have free and efficient government, principally because tyranny and inefficiency look uglier when seen near at hand than when viewed from a distance. But such states are unable to furnish to their citizens the opportunities that the great states afford and are too weak to protect the liberties which they cherish against the aggressions of powerful neighbors. By our federal system we have combined the strength of the great and the small state and eliminated the weaknesses of both. By giving to the federal government control of national affairs and to the states control of local matters, we have created a government stronger, I think, than any that has heretofore existed on the face of the earth; for with imperial size and grandeur, we have united the strength and purity of local self government.

There are other great advantages in our federal system. In the first place, the states furnish laboratories, as it were, in which governmental experiments may be worked out without danger of ruin to the entire government if they fail. In the second place the division of the sovereign power among so many different units of government makes violent and sudden change a matter of practical
impossibility. If the government at Washington should be destroyed or seized by revolutionists, we would still have forty-eight independent governments already set up and operating on the republican principle in the forty-eight states. On the other hand, the seizure of the government of one of the states or of one of the great cities would have but little permanent effect, because, with the power of the federal government and the other states unimpaired, orderly government on the republican principle would soon be restored to the people who had been deprived of it. The federal system gives to our national and state governments, therefore, a stability which no other governmental system within my knowledge has ever been able to attain.

The question which arises under the topic which I have chosen, is whether in the light of social progress any change in this federal system is demanded. My answer is that with changes in life and industry certain matters which were formerly of local have now become of national concern and we must so apply the federal principle as to give the national government control over these matters, but that there is no reason to abandon the principle itself or to give up one of the most cherished rights of our people, the right of local self government in local affairs.

We must look at life realistically. Undoubtedly, as our life has developed, some matters which were formerly matters of purely local concern have become matters affecting the nation. Not only has interstate commerce grown, but certain phases of production have become inextricably interwoven with interstate commerce, with the result that local governments are unable to exercise over them that control which the situation requires. It is clear, I think, that we must in some way give the general government a greater measure of control over these matters affecting the national welfare, either by revising our concept of the power possessed by the federal government under the commerce clause of the Constitution or by amendment of the Constitution to extend the power of the federal government to those phases of our life which have become of national significance. But, in doing this, we must exercise the greatest care not to destroy the right of self government in local matters possessed by the several states. It is easy to plan nationwide reforms by national legislation; but experience has taught us the danger of exerting national power in local matters where local opinion does not support the exercise of such power. It is infinitely better that reforms should follow the slow process of gradual edu-
CONSTITUTIONAL GOVERNMENT

cation and adoption than that they should be forced upon a people unprepared for or unwilling to accept them, or that the price of their attainment be the sacrifice of democracy. As said by President Wilson in his Constitutional Government:

"It would be fatal to our political vitality really to strip the States of their powers and transfer them to the Federal Government. It cannot be too often repeated that it has been the privilege of separate development secured to the several regions of the country by the Constitution, and not the privilege of separate development only, but also that other more fundamental privilege that lies back of it, the privilege of independent local opinion and individual conviction, which has given speed, facility, vigor, and certainty to the processes of our economic and political growth. To buy temporary ease and convenience for the performance of a few great tasks of the hour at the expense of that would be to pay too great a price and to cheat all generations for the sake of one." (1908 ed., 170-2 and 191-2.)

The third great principle of democracy incorporated in our Constitution is the supremacy of law. Other nations had dreamed of this but had failed to attain it, principally, I think, because of the confusion in their thinking of law and authority. We have separated the two. Authority with us, i.e., sovereign power, resides in the people. Officers are not rulers possessing sovereign power but agents of the people, elected or appointed for the purpose of administering government according to law. And in order that they may do this and may not appropriate sovereign power to themselves, we have so framed our government that none of these agents of the people shall have in his hands at any time all of the powers of government. Aristotle saw more than two thousand years ago that these were threefold: the power of making laws, the power of enforcing laws and the power of judging. John Locke made practically the same classification. And Baron Montesquieu, in his Spirit of Laws, pointed out, so clearly that no thinking man has since doubted the proposition, that the preservation of popular liberty requires the separation of these powers and their exercise by different officers of the state. This division was accepted as axiomatic in the drafting of the federal Constitution. It is expressly required in the constitution of forty-two of the forty-eight states. The constitution of Massachusetts, adopted in 1776 and largely the work of sturdy old John Adams, not only requires the division but gives the reason for it, "To the end that the govern-
ment may be one of laws and not of men’. Under such a division men make the laws, men interpret the laws, men enforce the laws; but the law thus enforced is not the arbitrary will of any of them, but law founded upon reason after due deliberation and tested by the standards which the people have set up for the protection of their liberties.

Not only have we thus divided sovereign power among the three branches of government, but we have arranged such a system of checks and balances that no department is allowed to exercise the share of power allotted to it without the cooperation of the others. The people say to the Congress, ‘You can make laws; but, if the President vetoes them, they will become law only if you can muster two-thirds of both houses of Congress in their support. You cannot execute or interpret the laws that you make or appoint men to execute or interpret them. The courts must interpret and the President must execute.’ They say to the President, ‘You can appoint men to execute the laws; but, except as to minor officials, your appointees must be confirmed by the Senate before the appointees can assume authority. Moreover, you cannot tax the people, to pay your appointees. Taxes must be raised by laws originating in the House of Representatives.’ They say to the judges, ‘Yours is the duty of interpreting the laws and rendering judgment in controversies which may arise respecting them, but you may not make laws or even enforce your own decrees. You cannot levy taxes or collect fees even to pay your salaries, but you must be paid out of the revenues raised by Congress. You cannot appoint your successors. They must be appointed by the President and confirmed by the Senate.’ And thus it results that so long as this division of powers and this system of checks and balances is preserved, it is impossible for any man or set of men to exercise the full power of sovereignty or to overthrow the liberties of the people, as has happened in so many of the countries of Europe and of South America.

The question recurs again whether, in the light of social progress, any change is required with respect to this division of sovereignty and system of checks and balances; and, as before, my answer is that the principle must be preserved but that it should be applied in such way as to meet modern conditions. One of the outstanding legal developments of recent years has been the growth in the executive department of administrative boards to which have been given certain quasi-legislative and quasi-judicial func-
CONSTITUTIONAL GOVERNMENT

tions. The Interstate Commerce Commission, the Federal Power Commission, the Federal Trade Commission, the Board of Tax Appeals, the National Labor Relations Board, are illustrations of what I have in mind. To some of these, as for instance the Interstate Commerce Commission, quasi-legislative functions have been delegated as a matter of necessity, because it is simply out of the question for a large deliberative body like Congress to deal with the details of rate making. To others, as for instance the Board of Tax Appeals or the Federal Trade Commission, quasi-judicial functions have been delegated because the courts have neither the time nor the facilities for making the technical inquiries necessary for proper settlement of the type of questions involved. There can be no doubt, I think, either as to the necessity for such administrative tribunals or as to the propriety of creating them. If the government is to exercise any adequate supervision over the conditions of our industrial and commercial life, this can only be done by some such administrative agency. The application of legislative policy by detailed regulations is essentially an administrative matter as is the determination of questions arising under the regulations; and, if full control of legislative policy is retained by the law making body, and full power of review over the exercise of quasi-judicial functions is preserved in the courts, no danger can arise from the apparent mingling of legislative, executive and judicial functions in the powers of these administrative bodies.

The ultimate separation of the three great powers, however, must be scrupulously maintained. Congress should not be permitted under the guise of delegation of administrative functions to abdicate its law making power in favor of the executive; nor should either Congress or the executive be allowed to trench upon the judicial function of the courts or in any way impair their independence or their power. The courts are, in truth, the very keystone of the arch of our constitutional structure. They must apply the Constitution as the fundamental law of the land, so as to prevent the government from destroying the rights of individuals, the states from encroaching upon the domain of the federal government, the federal government from invading the domain of the states, and the various departments of government from exercising powers which belong to the others. Without the exercise of this power by the courts our constitutional system simply will not work. The courts, therefore, must be kept independent of politics and of the other branches of government, and their power to perform the
function intrusted to them must not be interfered with. In many of the states the judiciary has been rendered more or less impotent by unwise laws which have made the judicial office elective, which have stripped the judge of his common law powers in conducting trials, which have limited the jurisdiction in equity and which have impose restrictions upon the power to protect and enforce constitutional rights. It is my deliberate judgment that, if the federal courts are thus stripped of their independence and power, our constitutional system cannot be preserved.

And this brings me to the real question confronting us with respect to the Constitution: Is it worth preserving, and do we wish to preserve it? The answer to that question depends upon whether we believe in democracy — in free government — or not. If with the communists we believe in the dictatorship of the proletariat, — if with certain others we believe in the dictatorship of the well-to-do, — if, in short, we believe that democracy has failed and that the only hope of efficient government is the iron hand of the dictator, — then the answer is "no"; for the Constitution is the embodiment of democracy and an insuperable obstacle to dictatorship. But, if we believe, as I do, that democracy has not failed and that it is the hope for the happiness of the human race, — that what the world needs is not less democracy but a deeper application of democratic principles and the embodiment of those principles in laws and institutions which will meet modern conditions — if we believe that, then the Constitution is not only worth preserving, but it must be preserved at all costs.

Some well meaning people believe, in a general way, in constitutional principles, but seem to feel that we need no longer give them the force of fundamental law to be enforced by the courts. They have been so much disturbed by a few mistakes of the courts in applying the principles, that they wish to take the whole matter out of the hands of the courts and leave the observance of the Constitution entirely to legislative bodies. Others, while not going this far, would emasculate the great general clauses of the Constitution such as the "due process" clause of the Fifth Amendment and the "due process" and "equal protection" clauses of the Fourteenth. I am satisfied that these persons do not understand what would be the deadly consequences of the course they advocate. Never was there greater need for constitutional protection of democratic principles than there is today. Less than ten years ago the Supreme Court had to invoke the due process clause of the Four-
teenth Amendment to strike down a state statute which infringed upon religious freedom. Within the past two years the court invoked the same provision to hold invalid a state statute which infringed the freedom of the press. Last year it relied upon the same provision to set aside a conviction in the courts of a state which had been obtained upon a confession wrung from an accused by torture. And only a few months ago it invoked the same provision to hold invalid the statute of another state which denied freedom of speech. We flatter ourselves too much if we think that we have progressed to the point where we no longer need to guard against tyranny in government.

As we look abroad in the world, we see even greater reason for holding fast to the constitutional landmarks. Everywhere democracy is being assailed; and in country after country it has been overthrown. Not only has sovereignty been taken away from the people and vested in dictators, but despotism has been established under which the most fundamental rights of man are not only violated but are brazenly denied and ridiculed. It is not a mere form of government, but the security of all that we hold dear in our civilization, that is endangered. As said by Professor McLwain of Harvard a few months ago in the magazine *Foreign Affairs*:

"The one great issue that overshadows all others in the distracted world today is the issue between constitutionalism and arbitrary government. The most fundamental difference is not between monarchy and democracy, nor even between capitalism and socialism or communism, tremendous as these differences are. For even in any socialistic or communistic regime, as now in every bourgeois democracy, there will be rights to be preserved and protected. Deeper than the problem whether we shall have a capitalistic system or some other enshrined in our law lies the question whether we shall be ruled by law at all, or only by arbitrary will."

One of the seductive fallacies, which arises ever and anon to confuse us, is that the Constitution is intended for our guidance in ordinary times but has no application to conditions of danger or emergency. The all-sufficient answer to this is that the purpose of the Constitution is to protect popular liberty against arbitrary power, and that it is only in times of emergency and danger that liberty is likely to be overthrown and that a guide to the exercise of sovereignty is needed for its protection. Let us never forget what was said by Jeremiah Black in *Milligan's* case, arguing for
the right of trial by jury, when in a time of public danger Congress had provided for trial before courts martial. Said he:

"It is precisely in a time of war and civil commotion that we should double the guards upon the Constitution. In peaceable and quiet times, our legal rights are in little danger of being overborne; but when the wave of power lashes itself into violence and rage, and goes surging up against the barriers which were made to confine it, then we need the whole strength of an unbroken Constitution to save us from destruction."

And in that case Judge David Davis, speaking for the Court, said:

"The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequence, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it, which are necessary to preserve its existence. . . ."

One who understands the nature, the history and the problems of democracy and the dangers which confront it in the modern world will have no doubt either as to the necessity of preserving our constitutional system for the protection of liberty or as to the wisdom of applying its principles for the solution of the problems of modern life. But for those who are confused by the false philosophies born of the sufferings of war torn Europe, let me answer their doubts and fears by the test given us from on high: "By their fruits ye shall know them." Men do not "gather grapes of thorns or figs of thistles." Prior to the birth of this country, philosophers told us that democracy as a form of government could have only a qualified success and that only in small and sheltered communities. You and I have lived to see democracy not only successful, but triumphant, not in a small and sheltered community but in a great nation whose bounds stretch from ocean to ocean and whose flag flies over distant islands of the seas. Why is this? The answer is that, under our Constitution, democracy for the first time in human history has been given true expression in the fundamental law of a people. For a hundred and fifty years under that Constitution the nation has gone onward and upward.
CONSTITUTIONAL GOVERNMENT

From thirteen poverty stricken colonies fringing the Atlantic with a population less than half that of the present city of New York, she has grown from the Atlantic to the Pacific and one hundred and thirty million souls respond to her jurisdiction. Not only has she become the richest and most powerful nation on the face of the earth, but, what is infinitely more important, she has given to the average man the best chance that he has ever had in the history of the race. With all of our faults and imperfections, there is more of opportunity, more of liberty and more of security for the average man beneath the flag of America than anywhere else under the sun.

As we gather here today, therefore, on the 150th anniversary of the signing of the immortal document which gave us existence as a nation, let us dedicate ourselves anew to the cause of human freedom, and let us highly resolve to preserve and maintain the principles embodied in our fundamental law under which the nation has grown to greatness. Where laws are needed to meet modern conditions, let them be enacted in the spirit of the principles which the Constitution embodies. Where any provision of the Constitution, by reason of change in conditions, conflicts with the true application of these principles, let it be corrected by orderly amendment. But let there be no disregard or undermining of the principles themselves. Much has been said as to the courts preserving constitutional liberty; but liberty cannot be preserved by the courts alone. It must be preserved by all of us — by the Executive, by the Congress and by the people themselves; for the strength of the Constitution resides, not in the written instrument, but in the devotion of the people to the principles which it embodies and the faithful observance of those principles by the officers whom they have intrusted with power. Let us have an end, therefore, of the divisions, the class feeling and the heresies which endanger our liberties, and let all men unite in preserving the free institutions of our country embodied in the instrument which our fathers gave us one hundred and fifty years ago today. And to the lawyers of America, who are in a peculiar sense the guardians of constitutional liberty, let me commend the words of the great Ben Hill of Georgia: "Who saves his country saves himself, saves all things, and all things saved do bless him. Who lets his country die lets all things die, dies himself ignobly, and all things dying curse him."