TENDENCIES AWAY FROM DEMOCRACY

APPROVED:

[Signatures]

Major Professor

[Signature]

Minor Professor

[Signature]

Director of the Department of Government

[Signature]

Dean of the Graduate Division

[Signature]
TENDENCIES AWAY FROM DEMOCRACY

THESIS

Presented to the Graduate Council of the North Texas State Teachers College in Partial Fulfillment of the Requirements

For the Degree of

MASTER OF SCIENCE

By

Ernest R. Griffin, B. S.
148832
Sherman, Texas
June, 1947
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>II. JUDICIAL INTERPRETATION OF THE CONSTITUTION</td>
<td>7</td>
</tr>
<tr>
<td>The Commerce Power</td>
<td></td>
</tr>
<tr>
<td>Taxing and Spending Powers of the Federal Government</td>
<td></td>
</tr>
<tr>
<td>Political Rights</td>
<td></td>
</tr>
<tr>
<td>III. PRESIDENTIAL PRACTICES AND THE CONSTITUTION</td>
<td>52</td>
</tr>
<tr>
<td>IV. PRESSURE GROUPS AND DEMOCRACY</td>
<td>86</td>
</tr>
<tr>
<td>V. DEMOCRACY AND THE ELECTORATE</td>
<td>97</td>
</tr>
<tr>
<td>VI. CONCLUSIONS AND RECOMMENDATIONS</td>
<td>116</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>135</td>
</tr>
</tbody>
</table>
CHAPTER I

INTRODUCTION

Since the formation of our present form of government by the Constitutional Convention of 1787, we have encountered many arguments and opinions regarding the proper operation of our democratic form of government; some of them well founded, some not, but each necessarily dependent upon the author's ideas or definition of democracy. One can prove almost anything if allowed to set up his own criteria in dealing with a given subject, even though they are basically untrue.

For every individual we will undoubtedly find different ideas as to what a democracy is, dependent upon what that individual holds to be the correct relationship between a person and his government. Such was the case of the delegates making up the Constitutional Convention, and one will note no time in our history, when actual agreement as to what constitutes a democracy has been reached by all. It is not the intent of this thesis to discuss the advantages or disadvantages of our lack of agreement, because such a discussion is not relevant to this study. However, it might be well to point out that what to some observers may seem departures from democracy will to
others appear to strengthen it. Democracy depends upon each individual's definition of the term.

Any discussion of a subject whose definition encounters greatly differing opinions, such as what is a democracy, must necessarily be preceded by what the author holds to be the correct one; for otherwise, there can be no basis of measurement as to whether we are strengthening our democracy, or whether we are drifting away from it. Furthermore, in order to remove the definition from the realm of opinion or fiction it must be shown to be based upon sound and accepted principle and fact. It is the intention of the author to arrive at a definition of democracy based upon governmental principles which are refutable by none, although further discussion in the light of this definition may not be accepted by all.

It is readily evident that that government which eliminates or makes no provision for the expression of the will of the people is far from our conception of democracy. On the other hand it is equally evident that the will of the people must have some element of restraint or control if we are to prevent confusion, rashness of action, and exploitation of the minority by the majority. Thus we must arrive at a solution which embodies both these basic principles. That solution is reached in what seems to be a true definition of democracy; namely, that
form of government in which those who are governed, the people, themselves, govern by law those agents of government who in turn govern them by law. Thus we have the government performing its duties according to the will of the people, that will being expressed through standard, uniform rules or laws, embodied in the Constitution. Through this means, both the government and the people enjoy maximum freedom of action in a manner that insures the utmost protection to all.

It is further evident that the definition of democracy given above is but a description, basically, of the government which in principle, we now live under in the United States. Therefore, any trends or tendencies away from our democracy have come about as a result of the way our government has been operated. To explain further that in principle our present government fits the definition of democracy given above, it may be pointed out that in our form of government the will of the people is very evident, and of a fundamental nature. We have a document, the Constitution, made by the people, which sets up the relationship between the people and the agents of government. A document which is not only considered as law, but as the supreme law of the land. Thus it is through our Constitution that we have the only method of carrying on our government in keeping with what the author terms to be a democracy.
Since the Constitution is the basic factor in our democratic government, much of this study will be based upon the content of that document, in relation to the operation of our government. It is evident, and subject to no controversy, that our form of government and its operation is dependent upon the Constitution. Thus we must accept the fact that any deviation from the procedures, powers, or any other provisions as laid down in our Constitution is a tendency away from democracy. Furthermore, acts of the agents of government, not specifically prohibited, granted, or strongly implied by the Constitution will be considered as tendencies away from democracy if taken without consideration of the will of the people.

Popular sovereignty is one of the basic principles of our government which must be maintained if we are to have a continuation of a democracy as defined above. However, it must be realized that maintenance of the effectiveness of this principle is not wholly the responsibility of the agents of government. The people are equally responsible in seeing that they exercise this power without allowing it to be usurped by the government. Therein lies what may be termed a danger to our democracy, brought about by the lack of knowledge, lack of interest, and lack of participation by the people in the operation of their government. These
defects on the part of the people cannot be classed as tendencies away from democracy from the constitutional viewpoint, because the Constitution only applies to the agents of government. However, who can deny that the above mentioned actions on the part of the people do not pave the way for departures from democracy by the government? Therefore, in this thesis, it is the objective of the author to make a study of deviations from the Constitution, as shown by certain acts of the agents of government, as well as dangers to our democracy that exist due to certain attitudes and practices of the people.

In pointing out deviations from the Constitution, which must of necessity be tendencies away from democracy, it is not the intent of the author to argue the desirability or need of the act, involving the deviation, in question. In some cases there is no doubt that the immediate ends achieved by such deviations are desirable. However, it is possible to have desirable immediate ends arrived at by methods or procedures which if followed, lead to a greater number of undesirable ends in the long run. That fact is frequently overlooked. Furthermore, since we have a government based upon a constitution, and since a means has been provided whereby the people can change that document, should we sanction any act, no matter how desirable if its formulation does not follow the
procedures laid down by our fundamental law? If such action is continued, our Constitution will undoubtedly lose its basis as a document of fundamental law, if in practice it can be changed without reference to the will of the people, since it was set up as an instrument to express that will. Furthermore, if the people allow a continued departure from the provisions of the Constitution, and permit themselves decreasing control through their ballot, we will have set the stage for widespread departures from democracy, perhaps to the extent of losing it entirely.

This study of tendencies away from democracy will be based upon facts involving actions of our government and the people. Such actions will be considered in the light of the principle of popular sovereignty expressed through law. Conclusions and recommendations derived from this study will be related to these two principles.
CHAPTER II

JUDICIAL INTERPRETATION OF THE CONSTITUTION

That the judicial branch of the government has as one of its main functions the interpretation of the Constitution is now a fact accepted by most constitutional authorities. Judicial interpretation is necessary to determine the validity of legislative statutes. It might be well to point out the source and extent of this judicial power, and to show its effect upon our system of government. Special attention will be given in this chapter to the growth of the Constitution through judicial interpretation of the power of Congress over commerce, taxing and spending, and over our political rights. The writer will seek to determine if the interpretation of the above mentioned powers that are provided in the Constitution has set the pattern for some tendencies away from democracy.

The National Constitution invests the courts with judicial power as follows: "The judicial power of the United States shall be vested in one supreme court and in such inferior courts as Congress may from time to time ordain and establish." The Constitution also prescribes

1 U. S. Constitution, Art. III, Section 1.
the extent of judicial power in the Supreme Court by enumerating the types of cases over which it will have jurisdiction.

The great conflict that immediately arose in regard to judicial power, and still exists in the minds of a few is that indicated by this question; from what source does the Supreme Court derive its power of declaring legislative acts unconstitutional? Or, stated in another way, from what source does the Supreme Court derive the power of judicial review? It is often said that judicial review has no constitutional basis whatsoever, and that the Supreme Court through the exercise of this power has encroached upon the powers of both the executive and legislative branches. It is further held that judicial review invalidates the principle of separation of powers and that through judicial review, we have a government of men and not of law.

There can be no doubt in any mind that our Constitution has developed largely through interpretation. That development has occurred, in the main, through actions of Congress, as well as through the decisions of the Supreme Court. Thus it might be well to examine the criticism of the Court mentioned above, not from the standpoint of evaluating the end results of judicial review here, but to see if that power is given to the courts by the Constitution.
There is no disagreement on the fact that the idea of judicial review existed before the framing of the Constitution. In fact, it is difficult to trace the first instance of the expression of this principle. Undoubtedly some aspects of it were derived from English law and court practices. At any rate, judicial review was well understood by many people in this country before the writing of the Constitution. Shortly before the Constitutional Convention, the following ideas seemed to prevail among the states in regard to judicial review.

A movement was under way to use state constitutional conventions together with referendums by the people as a means of revising the first state constitutions. The object of this movement was the abolition of legislative supremacy and the establishment of state constitutions as fundamental laws, enacted by the people at the ballot box, and binding on the courts in case of conflict with legislative acts. 2

Further weight is given to the idea that judicial review was widely accepted in this country prior to the Constitution, by Patterson in the following statement:

Finally, it should be noticed that judicial review was a nationally known doctrine before the meeting of the Federal Convention, that it had been practiced by the courts of several states, that it had been debated in the legislatures of some states, that it had been debated in a congress that represented the entire United States, and that it was so well known

---

in the states that Congress could ask them to accept it in national affairs without stopping to explain its meaning and effect. It was therefore a well recognized principle of constitutional law and was not established by a coup d'etat by either the Federal Convention of 1787 or by the Supreme Court in Marbury v. Madison.

There are several cases which were decided by the state courts between 1780 and 1787 which show how the doctrine of judicial review was exercised. The case of Holmes v. Walton which involved an act of the Legislature of New Jersey which provided for trial by six jurors in lieu of a trial by jury as provided by the state constitution, was held unconstitutional as violating a provision of the written constitution. Another case, Commonwealth v. Caton dealt with a treason act passed by the Virginia Assembly. The state court held that the Act was constitutional, but that a resolution of the House of Delegates related to the case was unconstitutional because the Senate had not given its approval. This case was decided in 1782. Finally, the case of Bayard v. Singleton, decided in May 1787, shows the exercise of judicial review. The case involved an act of the North Carolina Legislature which attempted to abolish the common-law right of trial by jury. The court held that such an act was invalid because no act of the legislature could by any means repeal or alter the state constitution.

---

There were other cases but those cited above are adequate examples of judicial review.

The arguments expressed by many of the delegates during the Constitutional Convention of 1787 leave no doubt as to their desire of wanting judicial review incorporated into the Constitution. Did they achieve this desire in writing the Constitution? The question may be answered by observing the provisions of that document.

There are two clauses in the Constitution which grant the power of judicial review to both state and federal courts. The first is as follows:

This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of the State to the contrary notwithstanding.

The state judges in their decisions, therefore, must uphold the Constitution of the United States in preference to their own state constitutions or acts of their state legislatures. If a part of a state constitution, or if a state legislative act conflicts with the supreme law of the land, the state judge must nullify it. Also, since the judge takes an oath to uphold the supreme law of the land,

---

5 C. A. Beard, The Supreme Court and the Constitution.

6 U. S. Constitution, Art. IV, Sect., 2.
he must nullify an act of Congress if that act is unconstitutional, for if he did not, he would have as an only alternative the nullification of his own state constitution or legislative statute, if they conflicted with the unconstitutional act of Congress. How can a judge determine the constitutionality of an act of Congress if he does not have access to both the Act and the Constitution?\(^7\)

It is therefore obvious that a state judge has the power to declare congressional acts, acts of the state legislature, and parts of his state constitution unconstitutional if they conflict with the Constitution of the United States. The question may well be asked, would one government confer upon the judges of another government the power of judicial review over its acts, and deny that power to its own judges? How could the Federal Courts exercise appellate jurisdiction of the state courts involving judicial review without themselves having that power? Furthermore, Congress has the power to make inferior federal courts out of the state courts, and if this should be done, they would have the power of judicial review under the Constitution.\(^8\)

The other clause of the Constitution which helps establish judicial review reads as follows:

\(^7\) Patterson, *op. cit.*, p. 17.

The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made or which shall be made, under their authority.

How could the Federal Courts determine whether a case had arisen under the Constitution, if the Constitution did not come before the courts? The courts must consider the Constitution if they are to decide the question of jurisdiction. If a case arises under the Constitution, then the Constitution must control, because the case can exist only by virtue of the Constitution. Moreover, when the Constitution comes into court, it must control the decision because it is the supreme law of the land. Congress may revoke a treaty, or repeal one of its own acts, but it cannot change the Constitution.\(^9\)

Now that the principle of judicial review of acts of the legislative branch has been established by constitutional provision, it is the intent of the writer to show how this practice on the part of the Supreme Court has been used to effect a growth of the Constitution through judicial interpretation. If the courts can hold, through interpretation, that acts of Congress are unconstitutional, they can, through


\(^{10}\) Patterson, op. cit., p. 19.
exercise of the same power, hold acts to be constitutional, when questioned. It is in regard to the latter that the writer shall attempt to show that certain tendencies away from democracy that exist today, have arisen through judicial interpretation of the Constitution.

The first conflict arising in judicial interpretation of the Constitution was whether the letter of the Constitution should be followed in making judicial decisions, as held by Jefferson, or whether a more liberal interpretation employing the principle of implied and inherent powers as expressed by Marshall and put into practice by him in his many great decisions, should be used. In looking over the history of judicial decisions we readily see that the Supreme Court has in the main followed the reasoning of Marshall, whose ideas on the matter have permeated the whole of our constitutional law. Marshall expressed his views as follows:

Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution are constitutional.

There are several decisions where the Supreme Court has carried this classic idea of Marshall to the extreme,
and it is through these decisions that the writer has discovered certain tendencies away from democracy as that term has been defined. No attempt will be made to trace the growth of the Constitution through judicial interpretation on all major issues; however, there are two or three lines of cases which the writer feels will be sufficient to bear out the conclusion that some judicial decisions have set the pattern for departures from democracy. In other words, cases in certain fields show a tendency away from that form of government in which the people, through law, control the actions of the agents of government.

The Commerce Power

The first group of decisions to be dealt with are those that have been handed down by the Supreme Court concerning the commerce power of Congress. The commerce power is vested in Congress by the Constitution as follows: "Congress shall have power to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes." From this power, as stated in the Constitution, the Supreme Court through interpretation, has probably done more to enlarge the powers of Congress than through any other group of decisions. To explain

this statement a number of cases will be discussed which exhibit the growth of the Constitution concerning the commerce power.

13 Gibbons v. Ogden was the first case to come before the Supreme Court in regard to the commerce clause. That case is important to this study, not from the standpoint of adding materially to the regulatory power of Congress, but because it was in this case that the Court determined the definition and scope of the power of Congress to regulate commerce. The case arose as a result of the state of New York granting exclusive rights of navigation of waters of the state to Fulton and Livingston for a period of years. These men in turn were allowed to pass on their acquired privilege to others. Accordingly they granted it to Ogden. When Gibbons, whose vessels were registered under the Coasting Trade Act of Congress of 1793, began operating between New York and New Jersey, the same route covered by Ogden, an injunction was secured against Gibbons. The case reached the Supreme Court by Writ of Error.

In determining what is commerce, the Supreme Court, speaking through Chief Justice Marshall, held as follows:

Commerce, undoubtedly, is traffic, but it is something more,--it is intercourse. It describes the commercial intercourse between nations and parts of nations, in all its branches, and is regulated by

prescribed rules for carrying on that intercourse.  

In regard to the extent of the power of Congress to regulate commerce "among the several states" the Court held as follows:

The word 'among' means intermingled with. A thing which is among others is intermingled with them. Commerce among the states cannot stop at the external boundary line of each state, but may be introduced into the interior. It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a state, or between different parts of the same state, and which does not extend to or affect other states. Such a power would be inconvenient and certainly unnecessary.

Commerce among the states must, of necessity, be commerce with the states. The power of Congress, then, whatever it may be, must be exercised within the territorial jurisdiction of the several states.  

Finally, in determining what is the commerce power, the Court held that:

It is the power to regulate, that is, to prescribe the rule by which commerce is to be governed. This power like all others vested in Congress is complete in itself, may be exercised to the utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.  

The Gibbons case gives the definition of commerce, its extent, and the meaning of the commerce power vested in Congress, which set the pattern for many future cases.

14 Ibid.
15 Ibid.
16 Ibid.
dealing with the commerce clause. Furthermore, in this case there can be seen the possibilities for growth of the commerce power, even though here, that power was only extended to a regulation of all navigation affecting commerce. However, if Congress could regulate all navigation affecting commerce, could not this body also apply the same principle to other factors and practices influencing commerce? The question is answered by the following cases.

The Gibbons case added little to the actual function of Congress, that is from the standpoint of the controversy involved. However, the decision of the Court in this case set the stage for an almost unlimited scope to the commerce power.

There are many other cases which show the rapid growth of congressional regulation based upon the power to regulate commerce. By far the greater number of cases in this category have been decided in the last ten years. It would be impractical in this study to try to consider all the cases which have increased the powers of Congress through the commerce clause, because the influence of some cases has been relatively small, even though the sum of them adds up to a great amount. The writer therefore will deal only with the more recent cases which have increased the powers of Congress, based upon the commerce power, to proportions which seem to have transcended some of our basic constitutional principles. In discussing these cases, the
reader should keep in mind that the writer is not seeking to determine the desirability of the acts of the government that are involved. In most instances, the results of such action may have been desirable, from the standpoint of achieving immediate ends. The writer is seeking to determine if the procedures used and the results of such use have violated some of our basic constitutional principles, and in doing so, must of necessity be classed as tendencies away from democracy.

The next case to be considered is National Labor Relations Board v. Jones McLaughlin Steel Corporation, decided in 1937. The National Labor Relations Board found that the steel corporation had violated the National Labor Relations Act of 1935, by engaging in unfair labor practices in regard to hire and tenure of employees. The violation was brought about by the discharge of certain workers. The Board further found that the corporation was using coercive methods on the employees to interfere with their self organization. The N. L. R. B. sustained the charges as brought by the employees, and ordered the corporation to initiate certain procedures to remedy the situation. The corporation refused to obey the orders, and upon

---

17 National Labor Relations Board v. Jones McLaughlin Steel Corporation, 301 U. S. 1, 1937.
denial of the Circuit Court of Appeals to take the case, the Supreme Court granted certiorari.

The National Labor Relations Act was challenged as invading the reserved powers of the states, through an attempt to regulate all industry. The reference in the Act to interstate and foreign commerce was questioned on the grounds that the Act was really set up to give the Federal government supervision over all industrial labor relations.

The Supreme Court upheld the authority given by Congress to the National Labor Relations Board. Speaking through Chief Justice Hughes, the Court said: "The grant of authority to the Board does not purport to extend to the relationship between all industrial employees and employers." The Court further held that the terms of Congress did not impose collective bargaining on all industry regardless of the effects upon interstate or foreign commerce. The object of Congress was to reach only those activities which it deemed would burden or obstruct that commerce, and therefore the act of Congress must be accepted as being within its constitutional power.

The Supreme Court then made a very far reaching statement as follows: "It is a familiar principle that

\[\text{Ibid.}^{18}\]\n\[\text{Ibid.}^{19}\]
acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of congressional power."\textsuperscript{20} Since no criteria have been set up as to what constitutes direct burdens, it must be accepted that this determination is left, in the last resort, entirely to the will of the Supreme Court, without the benefit of law, upon which the courts must base all decisions. Since our government is one of laws, does not the above action constitute a tendency away from democracy?

The Court further held in the case under discussion that:

\begin{quote}
Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress\textsuperscript{21} cannot be denied the power to exercise that control.
\end{quote}

Here again no definite standard or rule is set up to determine the ultimate extent of the commerce power. In fact, when compared to the quotation immediately above, we find a further broadening of the power of Congress, since in the first instance, burdens to commerce must be "direct" while in the latter, they are subject to congressional control if they are merely "burdens and obstructions."

It is evident that the Court realized the effect of

\textsuperscript{20} Ibid. \hspace{1cm} \textsuperscript{21} Ibid.
the statement quoted above, because it issued the following advice, as to the extent of the commerce power.

Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. The question is necessarily one of degree.\textsuperscript{22}

It seems that the Court is recognizing the possible effect of its reasoning, but makes no attempt to standardize what constitutes "direct" or "indirect" burdens to commerce. The only conclusion which may be gathered is that the question will be settled by the Supreme Court according to its own ideas. Since the question is one of degree, there cannot be a clear cut limitation to the commerce power of Congress. The degree necessary to give Congress control will always depend upon the will of the Supreme Court, rather than the will of the people expressed through law.

Finally the Supreme Court, as shown by cases which follow, has been able, when it so desired, to decide that many activities so very remote from commerce that their effect is difficult to trace, do constitute a "burden and obstruction" to commerce and are thus subject to congressional control. In other words, in later decisions, the Court

\textsuperscript{22} Ibid.
does not stick to its own advice, in the determination of what is national and what is local.

The decision in National Labor Relations Board v. Jones McLaughlin Steel Corporation upheld the constitutionality of the National Labor Relations Act, and therein broadened the scope of the commerce power to a control of labor relations in manufacture, when those relations burden and obstruct interstate commerce. It is not the intent of the writer to evaluate the political wisdom of the National Labor Relations Act, or the action of the National Labor Relations Board. The importance of the case is that it broadened the commerce power to cover regulation of manufacture for interstate commerce. Also, the reasoning used had a widespread effect on future regulatory acts of Congress, passed under the commerce power.

Another case showing increased power in Congress over interstate commerce is that of Gemsco v. Walling. The main question in the case was whether or not Walling, as administrator of the Fair Labor Standards Act, had authority to prohibit industrial homework as a necessary means of effecting a minimum wage rate in the embroideries industry. The Fair Labor Standards Act had as its primary objective the establishment of a universal minimum wage rate of forty

---

23 Gemsco v. Walling, 324 U.S. 244.
cents an hour in each industry engaged in interstate commerce, or in the production of goods for interstate commerce. This wage was to be reached as soon as possible without curtailing employment.

The administrator found that the only way to enforce the provisions of the Act was to prohibit homework in the embroidery industry. The Court sustained the action of the administrator, and in doing so, sustained the provisions of the Fair Labor Standards Act as passed by Congress. The argument of the Court in upholding the prohibition of home workers was that:

Their labor competes with the labor of the factory workers, within the same establishment, between establishments, and between regions where the industry is concentrated. The effects of their competition with factory workers are, as has been shown, to destroy the latter's right as well as their own to have, practically speaking, the benefit of the minimum wage guaranteed by the Act.\(^\text{24}\)

Are we then to assume that in any activity of production where homework is employed, and competes with factory workers, both being involved in production for interstate commerce, that Congress has power through the commerce clause, to eliminate one of the two? Such action cannot be sanctioned under the definition of democracy upon which this thesis is based. The people must express their will, and

\(^\text{24}\) Ibid.
control their government through law, in a democracy. The latter they do through the Constitution. The former, in the above case they had no chance to give.

It is interesting to note that the source of congressional power is based upon the Constitution, made by the people. It is ironical to find that document, whose intent was to control the agents of government, being used by those agents, through judicial interpretation, to force prohibitions upon the people. The people did not formulate the Constitution to control themselves. Nor does it seem logical to say that they intended it to be interpreted in a manner which would achieve that end.

Another case whose decision by the Supreme Court further broadens the power of Congress over interstate commerce is United States v. Wrightwood Dairy Company. The case was decided in 1942. The main questions involved here were as follows: was the Secretary of Agriculture authorized to regulate milk sold and produced intrastate, by the provisions of the Agricultural Marketing Agreement Act of 1937, and, if such was provided, was this a permissible action under the commerce clause of the Constitution?

---

The Wrightwood Company had not conformed to the order of the Secretary of Agriculture, because its business was completely intrastate, and according to the opinion of the Company, they could not be regulated under the congressional statute based upon the commerce clause. The Supreme Court found that none of the Wrightwood milk is "physically intermingled" with milk crossing state lines. The Court further found that sixty per cent of the milk sold in Chicago, the marketing area under consideration, was produced intrastate.

The lower Court held, in invalidating the Act that "there is a hiatus between the constitutional power of state and nation which precludes any solution of the problem by congressional legislation." The Supreme Court disagreed in the following reasoning:

The commerce power is not confined in its exercise to the regulation of commerce among the states. It extends to those activities intrastate which so effect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce.

It follows that no form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress. Hence the reach of that power extends to those intrastate activities which in a substantial way interfere with or obstruct the exercise of that granted power.
Let us note the further broadening of the commerce power in the above case. In Gemsco v. Walling, previously discussed, Congress was upheld in regulating, or rather abolishing, the minority part of the embroidery industry, because it interfered with the wages of the majority, both being engaged in production for interstate commerce. In the Wrightwood case, competition existed between intrastate and interstate production of the same commodity, with sixty per cent being produced intrastate and consumed intrastate. Yet, since forty per cent of the commodity came from interstate channels, Congress was upheld in its regulatory power. Could not this same power, according to the reasoning of the Court, be exerted in even more widely separated percentages between what was intrastate, and what interstate? For example, if an individual produced and sold, intrastate, a commodity which made up ninety nine per cent of the industry, and one per cent was interstate, Congress, through the above reasoning of the Court, would have the constitutional right to regulate all of the intrastate commodity, to make it conform with the one per cent interstate. By the same token, a state could not regulate its own intrastate business except at the discretion of Congress. Such reasoning suggests shades of the unreasonable. Due to our complex system of production, transportation, and state interdependence, is there any commodity that is produced and
consumed wholly intrastate, without at some point coming in contact with the same commodity moving interstate, or at least affecting something interstate? If not, then Congress has the power to regulate the production and sale price of any commodity, regardless of whether it is intrastate or interstate. Could there be a line of reasoning which would give Congress less limitation in the exercise of the commerce power? Furthermore, could there be a method through which the national government could more effectively dominate the reserved rights of the states and the people? Unlimited power in any field given to Congress, cannot be sanctioned, when the people have spoken to restrict that power through the Constitution. Any such practice is an undeniable tendency away from democracy.

It is difficult to accept the Court's statement that Congress "is not confined in its exercise to the regulation of commerce among the states," when the Constitution states that the commerce power will apply to "commerce with foreign nations, and among the several states, and with the Indian tribes." If the power of Congress is not limited by the wording of the Constitution, and therefore the will of the people, then what is the limitation? Furthermore, from what source does Congress derive this unlimited power? The Court relies on previous decisions entirely, to back up the statement given above, although court decisions are supposed to
be based upon the Constitution. In comparing the quotations listed above, the former from the court decision, and the latter from the Constitution, is there to be found any great resemblance between the two? It does not take close observation to conclude that the two statements are repugnant to each other, nor is it difficult to determine which is the more binding. It seems that through interpretation, we have reached the point where judicial decisions can directly contradict the Constitution, yet rely upon that document for support.

The writer is in full agreement with the statement of the Supreme Court, made in the Wrightwood case, that: "No form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress." However, do the facts of the Wrightwood case show that the case arose as a result of state activity? The answer is that the state had nothing to do with the situation that existed. Rather, it was the action of a private concern, which Congress was regulating. Congress was therefore dealing with personal activity rather than state activity. Can an act of a private individual or a group of individuals be construed as being an act of the state when the state has not provided for such action through law? The obvious

\[\text{Ibid.}\]
answer is no. Our conclusion must be that the above quotation does not fit the case at all, although it was used as part of the basis for the decision.

The Constitution does not apply to private individuals. It was made by the people to regulate the government, and not themselves. It is therefore true that no individual, from a constitutional sense, could ever thwart the action of Congress, and on that basis be subject to regulation by that body. On the other hand, if Congress tries to regulate individuals through statutory law in a manner prohibited by the Constitution, there exists an unmistakable tendency away from democracy.

The case which the writer feels expresses the ultimate in unlimited power of Congress over commerce is that of Wickard v. Filburn.\(^{29}\) The case arose as a result of the Agricultural Adjustment Act of 1938, amended in 1941, to set up marketing quotas for wheat.

Filburn had been allotted a quota of 11.1 acres of wheat, but had planted 23 acres. The wheat from the excess acreage, according to the act as amended in 1941, was subject to a penalty of forty nine cents per bushel. Filburn was also denied a marketing card necessary to sell

\(^{29}\) Wickard v. Filburn, 317 U.S. 111, 1942.
any of the wheat grown. He sought to enjoin enforcement of the marketing penalty and a declaratory judgment that the Act as amended, and applicable to him was unconstitutional since regulation of farm production and consumption did not come under the commerce clause, and furthermore violated the due process clause of the Constitution since the marketing penalty would deprive him of property inconsistent with the manner provided by the Constitution.

The purpose of the Agricultural Adjustment Act of 1938 as concerned wheat, was to regulate the amount moving in interstate and foreign commerce, to avoid surpluses and shortages, and consequently to avoid abnormally low and high prices and obstructions to commerce.\(^{30}\)

The Court in its decision states that: "This Act extends federal regulation to production not intended in any part for commerce, but wholly for consumption on the Farm."\(^{31}\) The question may well be asked, how can Congress, under the commerce power granted by the Constitution, regulate such production? The Court answered the question through the following reasoning:

It can hardly be denied that a factor of such volume and variability as home grown wheat would have a substantial influence on price and marketing conditions. This may arise because being in a marketable

\(^{30}\) Ibid.

\(^{31}\) Ibid.
condition such wheat overhangs the market and if induced by rising prices tends to flow into the market and check price increases.32

This reasoning is sound, but the Court realized that its decision was here only covering wheat which was to enter inter-state commerce. Wheat to be consumed on the farm had to be included as affecting inter-state commerce if the action of the Secretary of Agriculture was to stand. The Court reasoned as follows:

But if we assume that it is never marketed, it supplies a need of the man who grew it which would otherwise be reflected by purchases in the open market. Home grown wheat in this sense competes with wheat in commerce.33

The result of the decision was that Congress, under the commerce clause, could regulate the production of wheat for home use.

Let us now determine the possible future results, if the principles laid down in the above case are followed. If Congress can regulate the production of wheat for home consumption, could not this same principle be applied to any other commodity grown on the farm for home use? There is, therefore, no limitation to keep the federal government from completely controlling agriculture in all the states. Is it the will of the people that Congress tell them how much food they can grow for home use, and by the

32 Ibid. 33 Ibid.
same token tell them how much they can eat? If interstate commerce is so affected by home-grown, home-consumed products that such products can be regulated by Congress, is there a stopping place in the exercise of this power by Congress? One might answer that the people can stop it. It is true that through their ballot, the people can express their will; however, would we be willing to leave the complete operation of our government to the dictates of the ballot?

The only positive method of regulating the actions of the government is through law. The people have already spoken, and are continuously speaking to the government, expressing their will through this means. The medium used is the Constitution. The people have expressed their will in regard to commerce by allowing Congress the limited power of regulating foreign commerce, commerce among the states or interstate commerce, and commerce with the Indians. Did the people in granting powers to the federal government expect any of them to be unlimited? If they did, then why write the provisions into the Constitution in the first place?

In the cases discussed above, there is adequate proof that through judicial interpretation, the commerce power of Congress, as provided in the Constitution, has been construed in a manner to remove all limitations intended by our
fundamental law. If the people in granting powers to the federal government intended no limitation upon that government, there is no reason for having a Constitution. Furthermore, if through judicial interpretation certain limitations of the Constitution have been removed, in effect, a part of the Constitution has been destroyed. The destruction of our Constitution, direct or indirect, is certainly a tendency away from democracy, since our present form of government is dependent upon that supreme and fundamental law. There is no other way that the people can effectively control the government.

Taxing and Spending Powers of the Federal Government

The trend in the field of taxing and spending is toward unrestricted national power. There are several cases which bear out this statement, but only those which have added most to federal authority will be mentioned.

Federal domination over the states has been greatly increased through the Supreme Court's upholding the power of Congress to exempt from state and local taxation, the business of a federal agency. 34 On the other hand, the Supreme Court has upheld the power of Congress to tax

the business of a state agency. It is therefore evident that Congress, through almost unlimited spending powers, to be later shown, can engage in many activities which tend to compete with those of a state. The very fact that Congress has less limitations on spending puts the states at a disadvantage; however, when Congress may tax state business, yet prevent the states from taxing federal agencies, there is no way that the states may compete. The states, therefore, must surrender power to the national government, even those powers which the Constitution provided should be reserved to the states. When the federal government encroaches upon the powers of the states, by acting in excess of its constitutional limitations, there exists a tendency away from democracy.

It is undoubtedly true that states benefit from federal expenditure. However, since the Constitution specifies that certain functions are national, and others are reserved to the states, can the states relinquish their functions to the national government, constitutionally, any more than the national government can relinquish its functions to the states?

The principle is well established that Congress may

tax, not from the standpoint of raising revenue, but for regulatory purposes. The Supreme Court has upheld this practice on the grounds that the judiciary does not determine the effect of a tax, but rather determines if it is within the power of Congress to levy the tax.  

Federal taxation may be used as a method of controlling the policies of a state, in order to make them conform to the will of the federal government. The Social Security Act of 1935 is an example. The Act imposed a federal tax for unemployment compensation, with the taxpayer receiving credit not to exceed ninety per cent for payment of a state tax under a state law approved by the national government. In order for the states to benefit from the federal tax, their social security laws had to be approved by the federal government. Although the states could change their compensation laws at any time, if in doing so, they lost approval of the federal government, they could not benefit further from the money expended by the federal government. The procedure set up by Congress indicates coercion, but Justice Cardozo, speaking for the Court, said, "It was by persuasion, not coercion."  


It has generally been accepted that the power to tax is the power to regulate, and that this practice carried to the extreme, makes it the power to destroy. It is often argued that as concerns state and federal relations, the former is protected through representation in the two houses of Congress. This argument, however, ignores the fact that our political system is organized on a federal basis. 38

The power through which the national government exerts the most controlling force is that of spending for the "general welfare of the United States." 39 This clause of the Constitution has been widely discussed, but received its first judicial construction in the case of United States v. Butler. 40 Although the Court held in that case that the attempt of Congress to regulate agriculture through the Agricultural Adjustment Act was invalid, it did make the significant statement that "the power of Congress to authorize expenditure of public moneys for public purposes is not limited by direct grants of legislative power found in the Constitution." 41 Therefore, federal expenditures may be made for reasons other than

39 Ibid., p. 8.
41 Ibid.
those provided by the Constitution to be within the federal power. The Court warns against using the spending power to invade the reserved rights of the states, but since the powers of the states in this respect are not enumerated, and since the power of Congress may be generally applied, it stands to reason that the federal government has a superior power against which no state power may be brought to bear.42

It has been demonstrated by the Supreme Court that Congress has wide discretion in spending for the "general welfare." The Court held in regards to the Social Security Act that a distinction must be made between different types of welfare, that is, between particular and general. It is pointed out however, that Congress has the discretion of determining what is the general welfare, and the courts will not interfere, unless Congress makes use of arbitrary powers and is clearly wrong. Whether or not Congress uses poor judgment is not for the courts to determine.43

The question arises as to what an individual or a state may do to restrain the spending power of Congress, when its exercise by that body, conflicts with the rights of either. It most circumstances, a person and a state may

have their grievances heard in court. When we feel that our constitutional rights are being encroached upon, it is the duty of the judiciary to hear the case, if an actual controversy exists, and if a person is being injured by such encroachment. The spending power of Congress, however, does not fit this category. The Supreme Court dismissed, for want of jurisdiction, action brought by both a state and an individual, involving federal expenditures. 44

If excessive power, on the part of Congress, cannot be questioned by either a person or a state in the courts, then what other resort is there under the law? The obvious answer is that there is none. Therefore, a political restraint, the ballot, is all that can be exercised, and this remedy does not punish the wrongdoer, but merely turns him out of office. Where the government does not follow the provisions of the Constitution, it is acting as the sovereign, whereas the Constitution specifies that it is to be only the agent of sovereignty. If the Supreme Court does not follow the Constitution, in its process of judicial review, both the Constitution and judicial review have no value, and the latter becomes only an extravagant means for securing bad advice. 45

44 Massachusetts (Frothingham) v. Mellon, 262 U.S. 447, 1923.
45 Patterson, op. cit., p. 35.
If we had to rely upon political controls to restrain our government, we would find ourselves leaning on broken reeds, because no tyranny exceeds that of a majority without legal restraint. Our Constitution was set up by the people as superior law, to control the acts of the government, and it does not take a majority of the people to gain the protection of the Constitution.

The provision that Congress shall have power, "To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States," would not have been put into the Constitution if it had not been meant as a limitation upon Congress. The Constitution is an instrument of limitations upon the government. Thus the spending power of Congress is not one that should be determined by political procedures, because it is provided for in the Constitution. However, if federal expenditures cannot be questioned before the courts, by either a person or a state, as shown in the case of Massachusetts (Frothingham) v. Mellon, then such acts of the federal government are not subject to judicial review. The result under our system of government is unlimited power as far as the Constitution is concerned.

There is little doubt that if Congress can spend as

46
it pleases, without fear of judicial review, it can gain increased power over the states and the people. Congress gains this power because the power of spending is accompanied by the power of setting certain requirements to be met by those who receive the expenditure. It is through this means that Congress has forced the states to give up their reserved rights. By requiring the states to maintain certain standards to be eligible for receipt of federal money, the national government imposes its will upon the states and encroaches upon the reserved powers of the states, but does this in a way that makes the state's acceptance seem voluntary. The fact that the national government uses such procedures is almost an admission that it is exceeding its constitutional power. For otherwise, the federal government would pass laws which would directly achieve the result desired, and could force the states to comply without the inducement of federal expenditures.

Our national government is one of delegated and limited powers, dependent upon the will of the people as expressed in the Constitution. If through judicial interpretations, the limitations of the Constitution have been destroyed, and if the people therefore have no legal restraint over the spending powers of the federal government, the only logical conclusion is that here exists a
tendency away from that form of government in which the people control, through law, those who control them. The destruction of popular sovereignty, through law, is a tendency away from democracy.

Political Rights

The power of the states over political rights, especially the attempt of many of the Southern states to maintain a white primary, has been the subject of much discussion. Many practices have been initiated by the states, not a few of which have been subjected to judicial review. The cases to be considered here all had their origin in Texas.

In 1923 the Texas legislature passed a law establishing a white primary. The following year a case arose from the operation of the statute which finally reached the U. S. Supreme Court. The state statute was invalidated, because the state had taken the action to restrict the primary, and therefore had violated the equal protection clause of the fourteenth amendment.47

In 1928 the Texas legislature enacted a statute, which gave the State Executive Committee of a party the power to set up the voting qualifications for its primary. Through

action of the Executive Committee of the Democratic party, negroes were prohibited from voting in the Democratic primary. The Supreme Court in reviewing the statute, held that the action of the Committee was state action, since the state had given permission for the action of the Committee, and therefore such action was discriminatory under the provisions of the fourteenth amendment.43

The State Convention of the Democratic Party in Texas, without statutory authorization, then passed a resolution limiting participation in the Democratic primary to white Democrats. On the refusal of a county clerk to issue a negro an absentee ballot, another case arose. The Supreme Court held that there was a difference between the action of the Democratic Executive Committee, mentioned above, and that of the Democratic Party Convention. The former was held to be action by authority of the state, while the latter was party action which was taken without state authorization. Thus the action of the county clerk, based on a party decision, did not violate the fourteenth or fifteenth amendments.49

43 *Nixon v. Condon*, 286 U.S. 73, 52 S.Ct. 484, 76 L. Ed. 984.

The last decision of the U. S. Supreme Court, in regard to primaries in Texas, came in 1944. The suit was brought by a Negro citizen of Harris County, who had not been permitted to vote in the primary of July, 1940. The Court's decision in Grovey v. Townsend, another case, dealing with the primary system of Louisiana, had arisen and been decided by the Supreme Court. The ruling in that case made a primary an election, within the meaning of the constitutional provision, and therefore subject to congressional regulation as to the manner of holding it. This decision made it necessary for the Court to reexamine its reasoning concerning the Texas primary system.

The main question in Smith v. Allright was, did the action of the Democratic Party in Texas amount to the same as action by the state? It is readily understandable that if the action of the party is not determined by the state, then there is no basis for holding such acts void under the United States Constitution. In previous cases the state had its action twice ruled void, because positive steps had been taken by the state to limit participation in the primary to white voters. If the state takes no

---


positive action, can the fourteenth amendment be violated?

In answering the above question the Supreme Court held that the right to vote in a primary, without discrimination by the state like the right to vote in the general election, is secured by the Constitution. However, this reasoning of the Court does not answer the question because it first must be shown that the state had acted through the party. The Supreme Court accomplished this task through reasoning that since the state, through law, provides for the method of selection of party officials, and since the primary is conducted under state statutory authority, the party action becomes state action. The party, according to the Court, is a state agency because of the duties imposed upon it by state statutes, and is therefore subject to the provisions of the Constitution.

In concluding its decision the Supreme Court held that:

The United States is a constitutional democracy. Its organic law grants to all citizens a right to participate in the choice of elected officials without restriction by any state because of race. This grant to the people of the opportunity for choice is not to be nullified by a state through casting its electoral process in a form which permits a private organization to practice racial discrimination in the election.

52 Smith v. Allright, op. cit.
53 Ibid.
54 Ibid.
The Court therefore overruled its decision in Grovey v. Townsend.

Let us now examine the reasoning in the case given above to determine if it contains some tendencies away from democracy as provided by our Constitution. The Supreme Court throughout its decision reasons that the primary system is for the election of governmental officials. An understanding of the function of the primary makes it obvious that this reasoning is wrong. A primary is not a process of election, but rather a process of nomination of party candidates. The party candidates so nominated are not elected until the general election, and there are no state or party restrictions of suffrage in the general election, based upon race. The state has not cast its "electoral process" in a manner which permits a private organization to discriminate, because the actual election takes place in the general election, and the party's regulation of its members in the primary need have no effect upon the right to vote in the general election.

The Supreme Court admits that the Democratic Party in Texas is a private organization. The officers of the Party are not selected by the state, and are not paid by the state. The only connection between the party and the state is the state's regulation of the conduct of the primary, and this is necessary to allow the members of the
party the right of fair expression of their preferences through fair methods. It is not a determining factor as to the final election of public officials.

The Supreme Court states that ours is a "constitutional democracy," and that a private organization should not be aided by the state in practicing racial discrimination in an election. As previously mentioned, the state has not aided the discrimination because it has not deprived the Negro of the right to vote in any election, including the primary, through any law; and it is only through law that a state may enforce its will. Therefore, the action of the party is private action, or the action of a "private organization," as stated by the Court. How then can the provisions of the Constitution be made to apply? The Constitution was not written to control private individuals. Such control can only be achieved through statutory law.

The Constitution was written to protect the private citizen as well as the group, from the actions of the government.

Then the Constitution was written, certain powers were delegated to the national government. Those not delegated were reserved to the states or to the people. There was no intent for the national government to encroach upon these reserved powers. One may well ask, how then, may the federal government regulate activities of a state or
of the people when this power is not provided by the Constitution? The answer is that this practice has been brought about, in certain instances, through judicial interpretation of the constitutional powers granted to the national government.

If the people of this nation had not wanted protection from their government, they would not have formulated our fundamental law. How may we maintain a democracy if we sanction a practice that not only destroys the people's will, as expressed through law, but goes further to misuse that law by making it burden the very ones who wrote it for their protection? The answer must be that such a practice is undeniably a tendency away from democracy.

There are a few other interesting principles presented by the decision in Smith v. Allright. The Supreme Court held that the action of the Democratic Party, in limiting the participation in its primary, was the action of the state, even though the party is a private organization. To continue this line of reasoning, could we not say that the action of every private corporation, whose organization is regulated by laws of the state, is action of the state? Such a position is obviously untenable. Yet, if the reasoning, as a principle, can apply in one situation, it can also apply in all other like situations.

In further examining the principle that party action
is state action, it is obvious that if one party expresses the action of the state, there is no room in the state for another party. A state could not act through two different spokesmen. A state's action cannot be carried out in several different ways. So, if the Supreme Court be correct in its reasoning, there can be but one party in Texas, and that party acts as the agent of the state. In looking over certain forms of government that exist or have existed in other countries of the world, we see that when the state's and the party's actions have been the same, there is a resultant form of government which is far from our idea of democracy. Furthermore if party action is state action, then the state should have the power to completely dominate the party. If this be true, all political gatherings are subject to government control. How else could the state be sure that the party was correctly acting as its agent? Finally if the action of the party is the action of the state, why not have all officials of the party required to take the oath to uphold the Constitution, such as we require of our state governmental officials? The obvious answer is that the Constitution does not apply to party officials. The agents of government are the only ones who can violate the Constitution, and therefore, are the only ones who must take the oath to uphold it.

To summarize the powers of the national government
considered in this chapter, as affected by judicial interpretation of the Constitution, we may say that the powers given to the federal government are broadly granted and unrestricted. The last ten years have seen a removal of practically all restriction, through court decisions. The extent of federal authority has become a matter of governmental policy, and has substantially ceased to be one of constitutional law.\footnote{55} There is no disagreement on the fact that our local, state, and federal governments are being called upon to perform more functions now than ever before. However, the federal government has undoubtedly taken over the performance of many functions which the Constitution meant to be left to the states. The success of the federal government lies in the fact that it can provide results which the states have either not been able to provide, or have been too slow in doing so. However, expediency should not be given preference over the preservation of our democracy as provided by the Constitution. State and local governments must survive if we are to maintain our democracy because the people as yet have not delegated the functions of their state and local governments to the national government through law.

The citizen can preserve a democratic national government through the preservation of efficient and democratic state and local governments, but he cannot preserve efficient and democratic state and local governments through the more remote influence which he may exercise as a citizen of the nation. A democratic system must rest primarily upon intimate relations with governments which are nearer to the home and more subject to intimate control and control as a part of the citizen's daily life. 56

The cases discussed in this chapter should prove without doubt that the national government has been given broadened powers through judicial interpretation of the Constitution, which tend to destroy the effectiveness of that document, and also, in many respects, intended to destroy the constitutionally reserved functions of the states, making them merely administrative agents of the federal government. It must be remembered that the principle of judicial review is provided in the Constitution, and is essential to our democracy; however, it should not be practiced in a manner that tends to decrease the effectiveness of that document, as an expression of the people's will. The removal of the main functions of the government farther from the people and the decreasing control of the people's law, the Constitution, has created a dangerous tendency away from democracy.

56 Ibid., p. 11.
CHAPTER III

PRESIDENTIAL PRACTICES AND THE CONSTITUTION

It is important that the habits of thinking in a free country should inspire caution in those entrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power, and proneness to abuse it, which predominates in the human heart is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments ancient and modern, some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them. If in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for, though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly over balance in permanent evil any particular or transient benefit which the use can at any time yield.1

It is the purpose of this chapter to determine the relationship between the Executive and the Constitution, as concerns certain practices that have been adhered to in the operation of that branch of the government. It is agreed that the powers of the President have greatly

---

1George Washington, Farewell Address, September 17, 1796.
increased over the years, as a result of several factors. That the increase of executive power has been desirable, in many instances, is not to be denied. The method, however, by which a further growth of executive power is allowed to be achieved is of utmost importance, both in the internal operation of our government, and in the field of foreign relations. This is true because no longer can one field of operations be separated from the other. With this thought in mind, it might be well to review the powers now exercised by the President, as to their effect upon our governmental functions, how the growth of these powers has been achieved, and the effect that their continued exercise will have upon our concept of democracy, as being a government based upon the principle of popular sovereignty through law.

The powers of the President, which cover the executive practices to be discussed in this chapter, are dealt with by the Constitution as follows: "The executive power shall be vested in a President of the United States of America..."\(^2\) "The President shall be Commander-in-Chief of the Army and Navy of the United States..."\(^3\) "He shall have power, by and with the advice and consent of the Senate, to make

\(^2\) U.S. Constitution, Art. II, Section 1, Paragraph 1.
\(^3\) Ibid., Art. II, Section 2, paragraph 1.
treaties, provided two thirds of the senators present concur..." 4  "He shall take care that the laws be faithfully executed..." 5

Many ideas have been expressed as to the meaning of the provisions of the Constitution, quoted above. For example, the words "executive power," to some mean a grant of power to the President, while to others they are merely a designation of office. Furthermore, since the President is only vested with "executive power" by the Constitution, is this the only kind of power he is capable of exercising? If the preceding question is answered affirmatively, the following question arises. How can the Executive gain power from the Legislative branch, which by the same reasoning, has only legislative power it can use to confer? Other questions that have arisen are those concerning limitations upon the President, in the light of present judicial interpretation of the Constitution, and whether there are other effective limitations.

It is not the intent of the writer to deal directly with the questions listed above. The objective of this chapter is to examine some of the practices of the President, both in internal and external affairs, to

4 Ibid., Art. II, Section 2, Paragraph 2.
5 Ibid., Art. II, Section 3.
determine whether they violate our conception of democracy, either as being departures from the Constitution, or departures from popular sovereignty expressed through law. Of course, in arriving at these objectives, the writer's ideas as to the answers to the questions above, will become evident. It should be kept in mind, however, that the writer is not seeking to weigh or determine the desirability of the action taken by any of our branches of government. We are here dealing only with governmental principles, and not seeking to determine whether the actions of the government were, or were not, desirable, in view of the situations which brought them about.

That the government has been called upon to exercise greatly increased functions cannot be denied. In the growth of governmental functions it is interesting to note the changes that have taken place concerning what, heretofore, were basic principles of the Constitution. One of the principles that has greatly changed is that of separation of powers between the Executive, Legislative, and Judicial branches, and the resultant principle of checks and balances. Delegations, by Congress, of legislative power to the Executive branch, has in the main, brought about our new concept of the above mentioned principles.

There are various ideas concerning the limitations which should be applied to delegations of legislative
power. The ideas of some, if widely practiced, would effectually do away with the legislative branch, by allowing the exercise of their functions by others. On the other hand, there are those who would seriously handicap our government in its increasing functions, by maintaining a rigid exercise of legislation, only by the legislative body, a position of doubtful effectiveness when one considers the many functions which our government is now called upon to perform. When dealing with technical regulations, or subjects about which the legislators have little knowledge, there is a need for delegation of certain powers to others to achieve the results desired. Furthermore, the legislature is not in continuous session, so provisions must be made whereby certain situations which arise can be adequately handled. Finally, in times of emergency, it might not always be advisable to wait for legislative action, if to do so would seriously endanger the security of the country.

From the standpoint of judicial interpretation of the Constitution, concerning legislative delegations, it is difficult to arrive at a clear cut standard, or basic definition as to what is the proper degree of delegation of legislative powers. There are decisions which have invalidated legislative acts, as exceeding the limits, and others which have

upheld delegations as not exceeding the limits. The dividing line is often thinly drawn and it seems that the determination rests on the discretion of the judges.

Where positive delegation has taken place, that is, direct action by the legislative body in delegating its powers to others, the courts have exercised, in varying degrees, the practice of holding such action void, depending upon the situation involved. There is no doubt that the courts have allowed more leeway, concerning delegations of power, during war, than during peace. As to legislation, or the practice of forming policy, by the executive branch through action of the President, the courts have made little use of judicial review. It is the opinion of the courts that great weight should be given to executive interpretation of the laws, particularly if such practice is uniform and of long standing. The practice in reference here, is that of the President interpreting the laws, and basing his action accordingly, such action not always being in compliance with the intent of Congress in passing the law.

With the points listed above in mind, let us now review some of the actions of Congress and the President, concerning legislative delegation by the former, and law

---

Edward S. Corwin, The President Office and Powers, p.112.
making without benefit of delegated power by the latter. The discussion here will deal mainly with happenings over the last fifteen years, in which we have been more or less in a constant state of emergency of some sort, either during peace or war.

Congress, in order to relieve the devastating effect of the depression period conferred an unprecedented amount of discretionary power upon the President, during times of peace. This discretion was widely used to regulate both the internal and external affairs of the government. The regulation of internal affairs was occasionally challenged \(^8\) by the courts, but regulations formulated in the interest of external relations were practically unlimited. \(^9\) It was realized that in order to achieve certain results internally there had to be extensive action externally, as the one affects the other. This practice became even more prevalent as war clouds began to gather over the world, and the external functions of our government became the deciding factor as to what the internal functions would be. With the actual declaration of war, all limitations concerning legislative delegations, and executive law making largely disappeared.

---

\(^8\) A. L. A. Schecter Poultry Corp. et al. v. United States, op. cit.

The powers of the President, exercised internally or on the home front, should depend entirely upon the Constitution and congressional statutes. The extent of these powers depends upon the generosity of Congress, or upon the ability of the President to interpret the statutes to achieve the ends he desires. To the former there is little criticism if in pursuance of the Constitution. The latter, if unlimited, is indefensible under a government of popular sovereignty through law.

That the President has done much to decrease the control of Congress over legislation is evident, partly through congressional action and partly through executive action. The executive, according to the Constitution is to "take care that the laws are faithfully executed."

However, can it be expected that all laws will be executed, with the same vigor? The President, through selection of laws he enforces, or through varying degrees of enforcement of those he does select, can do much to circumvent the intent of Congress. The President furthermore, may interpret a law entirely different from the way Congress intended, and because of limited judicial review in this field, especially concerning foreign relations, may completely override the will of Congress in executing the law. The President, as past history shows, may even use the law to support an action which Congress meant to prohibit.
An example of the above is the exchange of destroyers by the United States for British bases in the Western Hemisphere, made in 1940. The exchange was made through an executive agreement, and not a treaty. Congress had not passed a resolution or statute authorizing the President to make the trade. The opinion of the Attorney General, in upholding the legality of the transaction, relied for statutory authority upon the Act of March 3, 1883, which gave the President wide discretion in disposing of unfit vessels of the fleet. The Attorney General held that the destroyers traded fitted this category and thus could be disposed of by the President. It is interesting to note that the British did not consider the vessels unfit. They intended to use them in immediate combat. Also, only a few days before the exchange, the serviceability of the vessels had been attested to by high ranking naval authorities.

It cannot be argued that in passing an act in 1883, Congress meant it to apply in an entirely different situation in 1940. Furthermore, the Act even at the time it was passed was meant to apply only to unfit vessels. Those traded to Britain certainly did not fit that definition.


11 Louis W. Koenig, The Presidency and the Crisis, p. 33.
Again we may use the example of the destroyer-bases exchange, in this instance to show how the executive acted directly in conflict with a congressional statute, yet used it to support the action. In one section of the Act of June 28, 1940, Congress expressly forbade transfer, exchange, sale or other methods of disposal of any military or naval weapon, unless the Chief of Staff of the Army, in case of military material, and the Chief of Naval Operations, in case of naval materials, had certified that such material was not essential to the defense of this country. Congress undoubtedly did not intend this provision to authorize the trade of destroyers for bases. The intent, on the part of Congress was to prevent the disposal of serviceable materials, rather than facilitate it.\textsuperscript{13}

In referring to the destroyer trade, Corwin, in referring to the action of the President, said, "He thrust aside on that occasion, legislation which was undeniably enacted by Congress in the exercise of its constitutional powers."\textsuperscript{14}

\begin{flushleft}
\textsuperscript{12} Congressional Record, June 21, 1940, p. 13315.

\textsuperscript{13} Koenig, op. cit., p. 33.

\end{flushleft}
It cannot be argued that the end result of the destroyer-bases exchange was disadvantageous either to the United States or to Britain. We gained extended security; Britain gained much needed naval replacements. However, the methods used to achieve the desirable end are not in keeping with the people's will, as expressed in the Constitution. Nor are they in keeping with the people's expression of their will through the ballot. The people elect their congressmen to represent them in formulating policy and making laws. They thus express their will. They also elect the President, to execute the laws, and not to make them. If the President can disregard a law passed by Congress, in pursuance of the Constitution, or through interpretation, change the intent of Congress, is there any advantage in maintaining that branch of our Government? Furthermore, if the people's law, the Constitution, cannot control the agents of government, we cannot maintain our democracy.

It is often argued, and borne out by practice, that in times of urgency or during emergencies, the President may exercise powers which could not otherwise be used. Nor does the President have to rely upon acts of Congress to provide statutory authority. That then is the source of this power? In the case of *In re Neagle* Justice Miller gave expression

\[15\] *In re Neagle*, 135 U. S. 1.
to the broad doctrine that the President's duty is not limited to enforcing acts of Congress or treaties according to their express terms. His duties may also include the rights, obligations, and duties growing out of the Constitution, out of international relations, and out of all the protection implied under the nature of our government under the Constitution. This idea of the President's power was further expressed by Attorney General Cushman in several opinions, in which he held that as a result of the Chief Executive's duty to "take care that the laws be faithfully executed" he had power to institute investigations, and incur expenses for same which became the obligation of Congress to meet.

The ideas expressed above, by the Supreme Court and the Attorney General, plus certain action of the President based upon these ideas, led to what is usually referred to as the President's "stewardship theory." In brief, the main points of this theory are as follows: first, executive power is limited only by specific restrictions of the Constitution, or by Congress in the exercise of its Constitutional powers; second, that the President is the steward of the people and is bound to do all he can for the people;

16 Corwin, op. cit., p. 127.

17 Ibid., p. 129.
third, that the President need not rely on specific authorization to act, unless such action is expressly forbidden by the Constitution or by laws.

The above ideas of the stewardship theory were expressed by President Theodore Roosevelt in his Autobiography. That they were adhered to in later years can be easily shown. In his Labor Day speech of 1942, President Franklin D. Roosevelt demanded that Congress strengthen the Emergency Price Control Act of 1942. The President said, "In the event that Congress should fail to act, and act adequately, I shall accept the responsibility, and I will act." Furthermore, the President did not hesitate to subtract from, or add to statutory provisions, whose enactment lay within the power of Congress beyond any possibility of challenge. The vast number of "defense agencies" were brought into existence by the President without reference to statutory authority.

What is the effect of the stewardship theory? This theory, in effect, asserts that when Congress refuses to act, or cannot act for lack of constitutional powers, the result is a mandate to the Executive to act. This line of reasoning makes it evident that action of the President,

---

18 Corwin, "The War and the Constitution; President and Congress," op. cit., p. 18.
19 Ibid., p. 19.
taken in such a situation, is not subject to congressional control. The obvious result of presidential action based on such reasoning is a government of unlimited powers, a government of men and not of laws.

Let us weigh the stewardship theory against other basic governmental principles as expressed by some of our most notable students of the Constitution. Chief Justice Marshall, speaking for the Court in McCulloch v. Maryland, said, "This government is acknowledged by all to be one of enumerated powers." He further said in the same case, "We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended." Speaking in the case of Ex Parte Milligan, Justice Davis 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 consequences, 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

20 Corwin, The President Office and Powers, p. 132.

21 Ibid., p. 132.

22 McCulloch v. Maryland, 4 Wheat. 316, 4 L. Ed. 579, 1819.
existence, as has been happily proved by the result of the great effort to throw off its just authority. 23

Charles Evans Hughes, in an address during World War I, said,

While we are at war, we are not in revolution. We are making war as a nation organized under the Constitution, from which the established national authorities derive all their powers, either in war or in peace. The Constitution is as effective today as it ever was, and the oath to support it is just as binding. 24

In further weighing the stewardship theory against basic principles of our government, there are several questions which must be answered. First, can there be control of executive action when expressly forbidden by the Constitution, or allowed by Congress? And if not, may the President act as he pleases? Are there limitations through judicial review? As these questions are answered, our definition of democracy should be kept constantly in mind.

If the President, according to the stewardship theory may refuse to execute a valid law of Congress, or may take action without Congress having spoken, through law, the obvious result is that Congress has lost control over the President, who is supposed to see that the laws are "faithfully executed." Thus, the representative character of our government is destroyed, unless one clings to the weak

23 Ex parte Milligan, 4 Wall. 2, 18 L. Ed. 281, 1866.
argument that the President is the people's representative, whose will should supplant that of Congress in case of conflict between the two. If this argument is accepted, then there is no alternative to the fact that laws may be made and executed by the same branch of government, a practice inconsistent with our ideas of democracy.

Since it is impossible to cover every detailed act of the President by constitutional provision, and since Congress, as pointed out above has no control, the result is that the President, as far as legal limitations are concerned, may act as he pleases, subject only to the ballot. Since the Supreme Court does not accept political questions as being within its jurisdiction, there is no opportunity for judicial review.

It is obvious that the stewardship theory transcends our conception of democracy. Ours is a government whose powers are enumerated and limited by the Constitution. Constitutional limitations apply to the executive as well as to the other branches of the government, for otherwise, why would the powers of the President be mentioned in the Constitution? Furthermore, if the people had meant for the executive branch to be both legislator and executor, why would a Congress have been provided? The obvious answer is that Congress was set up by the Constitution, to be the legislative body of our government, and not a useless
branch whose action can be ignored or usurped by the President. When Congress passes a law, the President is bound by the Constitution to execute that law.

It is interesting to note that in acting neither under congressional statute, nor constitutional provisions, the President claims authority for his action, as being the representative of the people. A statement by President Franklin D. Roosevelt is an example. In his Labor Day Speech in 1942, President Roosevelt said, "When the war is won, the powers under which I act automatically revert to the people to whom they belong." The powers the President was referring to included internal as well as external functions. Now how did the President secure these powers from the people? In order to satisfy our definition of democracy, the only way the President may receive powers from the people is through law. The people's law is the Constitution. Therefore, the only way the President can gain power from the people is through the Constitution, and when the people speak through that instrument, they are expressing their will in the only way it can be expressed effectively. Professor Corwin, in referring to the President's statement quoted above says, "This seems to suggest that the

President derives his war powers directly from the people, and not via the Constitution, a doctrine closely akin to the Leadership principle which our armed forces are combatting today in the four quarters of the globe." 26

We must conclude that if the President bases his action on the people's will, and if that will is not expressed through law, the Constitution, then the only other basis of authority for the President's actions is the expression of the people through the ballot. Furthermore, the only control is through the ballot. Thus the President may use his discretion as to when and for how long he is going to exercise the powers belonging to the people, and the people must accept the President's decision, impeachment being a possible but seldom attempted remedy, until the next election. The results by that time may be such that to change presidents will not effect a remedy. It is clearly evident that such practices cannot be upheld if we are to maintain our democracy, through law. The President is, beyond question, obligated to execute the laws passed by Congress. If Congress, in making the law encroaches upon presidential prerogatives, or demonstrates what to the President seems unwise, he has ample power to voice his will through the veto. Once a statute has been enacted, whether

26 Ibid., p. 20.
the President approves or disapproves of it, he has no other choice under the Constitution but to execute it, until he is prevented from doing so through judicial procedure. To act in any other manner constitutes a tendency away from democracy.

The decision of the Supreme Court which has probably done more to make the powers of the President unlimited, in both internal and external government functions, is that handed down in the case of U. S. v. Curtiss Wright Export Corporation. The case has important bearings on congressional delegations of legislative power, sovereignty, executive agreements, and the effect of war upon the Constitution.

The Curtiss Wright case involved a criminal prosecution for violation of an arms embargo applying to the participants in the Chaco War. Congress through a joint resolution in 1934 had authorized the President to prohibit the sale of arms and munitions, to countries engaged in armed conflict if he found that such action might contribute to the reestablishment of peace between those countries. The Curtiss Wright Corporation was charged with selling arms to one of the belligerent countries in violation of the embargo. The Corporation rested its case

---

on the grounds that the power invested in the President by the resolution, was an unconstitutional delegation of legislative power.

In arriving at its decision, upholding the delegation of power, and the resultant action of the President under it, the Court used as its chief basis of reasoning the fact that there is a difference between limitations of delegation between internal and external governmental functions.

The broad statement that the federal government can exercise no powers except those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers, is categorically true only in respect of our internal affairs. \(^{28}\)

The conclusion must be that in external affairs, the national government is not limited through lack of Constitutional provisions, either in determination of policy, or in matters of delegation of powers.

The Court further reasoned that in the internal field, the Constitution meant to carve out powers belonging to the states, and delegate them to the national government. Therefore, this is the only field to which the Constitution applies since the states have no international powers, and thus none to delegate. \(^{29}\)

International powers belong exclusively to the national government, because of its sovereignty in external governmental functions. There are thus two sources of

\(^{28}\) Ibid. \(^{29}\) Ibid.
sovereignty in this country. In the first place, there can be no doubt that under the Constitution, the people are sovereign, since the people made this supreme law, and are the only ones who can change it. Since the Constitution, however, does not limit the national government in foreign relations, here is an instance where the government exercises sovereignty. That this condition, concerning sovereignty, exists in our government, is a factor not widely realized or understood. Those who say that the government is merely the depository of the people's sovereignty, are in error concerning foreign relations, according to present practice, and decisions of the Supreme Court. In referring to the external sovereignty of the government, Justice Sutherland, speaking for the Court said, "Rulers come and go; governments end and forms of government change; but sovereignty survives. A political society cannot endure without a supreme will somewhere."\(^\text{30}\)

We must now consider the possible effect of our two types of sovereignty, one internal, in the people, the other external, in the government. We would be very much in error to say that one can operate without affecting the other. Is it possible for the government to carry out its foreign policies without affecting our internal activities? By the same token, is it possible for us to carry on our internal

\(^{30}\text{Ibid.}\)
policies, without in some way, affecting our foreign relations? The answer, under present complexities of world relations, must be that neither type of sovereignty can operate without affecting the other. Which then is to have precedent? To what degree may one type of sovereignty dominate the other, and still leave us with a democracy, as it has been defined? These questions have not been directly answered, but there are certain inferences that may be drawn from past experience and practice.

The Supreme Court in the Curtiss Wright case said:

The power to declare and wage war, to conclude peace, to make treaties, to maintain diplomatic relations with other sovereignties, if they had never been mentioned in the Constitution, would have vested in the federal government as necessary concomitants of nationality.\textsuperscript{31}

From this statement it must follow that a silence on the part of the Constitution, is not a denial, but an affirmation of the power of the national government to adopt any policy it sees fit to bring a foreign war to a successful conclusion.

Concerning the action of the government, internally, it seems that there are no limitations, as long as such action is taken for external reasons. In other words, all that the federal government has to do to get around

\textsuperscript{31} \textit{Ibid.}
constitutional limitations concerning internal functions, is to say that a certain act is necessary for external purposes. Thus the amount of protection we have under the Constitution depends upon the will of the federal government, in carrying out its external affairs. Weight is lent to this statement through the Supreme Court's decision in Missouri v. Holland. Congress was seeking to regulate the killing of migratory birds, coming into this country from Canada, a function undoubtedly reserved to the states. When Congress sought to achieve this end directly, through statute, its action was declared invalid. But when a treaty was made with Great Britain, achieving the desire of Congress, it was upheld as being a valid exercise of federal powers. There can be no doubt that here, the federal government used its external power to achieve internal ends. The extent to which Congress may go in other like situations has not been determined; however, the precedent has been set. The future will determine the extent of its use. The Constitution is not a limitation, and as far as the people are concerned, there can be no other limitation from the standpoint of law. Furthermore, since the constitutional limitations on delegations of


legislative power to the President are not applicable in foreign affairs, and since the President, through assertion of his own prerogatives claims wide discretion in external relations, the possible result may easily be that our internal affairs may be subject to the discretion of the President as a result of his foreign powers. Past history bears out this statement.

Much has been said and written concerning the power of the President to make executive agreements with other nations, which for all practical purposes constitute treaties, and the treaty-making power as provided in the Constitution. The fact remains that the executive agreement has been widely used in foreign relations, and is now generally accepted, as being a valid exercise of presidential power.

The Supreme Court has abstained from exercising jurisdiction in controversies concerning treaty making by executive agreement, saying this is a political question to be determined by Congress and the President. To date, the President has been able to keep Congress well out of the picture.

Paragraph 2 of Section 2 of Article II of the Constitution provides that the President "shall have power, by and with the advice and consent of the Senate to make treaties, provided two thirds of the senators present
concur." Taken literally, this provision must mean that the Senate is associated with the President throughout the entire process of making a treaty. This is not true in practice however, because it is now widely accepted that the President alone has the power to negotiate treaties. The role of the Senate in treaty-making, through custom, has been reduced to merely a veto power over the President's action;\textsuperscript{34} and, even that power has disappeared with the growing use made of the executive agreement in foreign relations.

The use of the executive agreement has made it possible for the President alone to exercise the treaty-making power, without either the aid or consent of the Senate. There are numerous instances to prove this statement. Japanese immigration to this country was for many years regulated by an executive agreement made in 1907.\textsuperscript{35} The Lansing-Ishii agreement of 1917, recognizing special rights of Japan in China, is another example.\textsuperscript{36} Several agreements have been made under which Presidents, at times, have used the Army and Navy to supervise elections in the Caribbean countries.\textsuperscript{37} Lastly, the First and Second World Wars show many instances of the use of the executive agreement as a method of treaty-making.

\textsuperscript{34} Corwin, President Office and Powers, op. cit., p. 234.
\textsuperscript{35} Ibid., p. 236.
\textsuperscript{36} Ibid., p. 236.
\textsuperscript{37} Ibid., p. 237.
It is often contended that executive agreements are binding only upon the administration making them, and may not be construed as a part of the "supreme law of the land." Past history and decisions of the Supreme Court do not bear out this contention. One of the most recent decisions of the Court concerning the weight of executive agreements is that handed down in United States v. Belmont, decided in May 1937. In that case, the Court held that the President, as the sole organ of international relations for the United States, could enter into agreements with foreign countries without consulting the Senate. Furthermore, state laws or policies cannot change the situation. The supremacy of treaties is provided in the Constitution, but the same rule holds, concerning all international compacts and agreements, from the fact that complete power over international relations is in the national government, and cannot be subject to interference by the states. Executive agreements, therefore, not only have the force of law, they may have the force of "supreme law of the land." It is obvious that the only difference between an executive agreement and a treaty is that the latter is ratified by the Senate.

39 Ibid.
40 Corwin, President Office and Powers, p. 238.
The last issue to be discussed in this chapter concerns the powers of the President to protect property and lives of United States citizens in foreign countries. This subject also raises the question whether acts of the President, through exercise of his discretion in foreign relations, might result in presidential war making.

The Constitution lodges the power of declaring war in Congress, but close scrutiny of the customary powers of the President in foreign affairs lends weight to the argument that a war may be brought about by him and armed conflict started, regardless of whether Congress has made a declaration. This statement is borne out by several examples, but only one is necessary here.

In 1854, a naval vessel bombarded the town of Greytown, Nicaragua, on orders of the President, because of Nicaragua's failure to pay reparations for an attack upon the United States Consul. Congress had not ordered the bombardment, and certainly had not declared war against Nicaragua. Nevertheless, a state of war could have been said to exist, brought about wholly by the action of the President.

In upholding the act of the President, the Court held that the President is the only legitimate organ for carrying on negotiations between this country and others, in

---

41 U.S. Constitution, Article I, Section 8, paragraph 11.
matters concerning the interests of the United States and its citizens. United States citizens in foreign countries must look to the President for protection of life and property. The President may carry out this duty in the manner most convenient, whether by negotiation or by force. 42

There are several instances where a state of war has, in reality, existed without a declaration by Congress. For example, prior to our declaration of war against Germany in World War II, the President had ordered all American ships to take the initiative in attacking all German submarines which they encountered. The order was based on the reasoning that German submarines could be classed as pirate vessels. In fact, the sinking of American vessels by the Germans was described as an act of piracy. So, if the Germans were pirates, the United States was free to resort to the rules of international warfare against piracy, with the result that our vessels could attack and capture German submarines without a declaration of war. 43

It would have taken a very good argument to prove that the German submarines were pirates. A pirate is one who roves the sea in an armed vessel, attacking other vessels

42 Corwin, President Office and Powers, p. 247.

43 Koenig, The President and the Crisis, p. 57.
indiscriminately, on his own authority. He has no commission from a sovereign state, and seizes vessels by force with the intention of appropriating them to himself. The German submarines did not fit this category. They were commissioned by a sovereign state, and were attacking vessels in behalf of that sovereignty. Furthermore, they did not attack indiscriminately.\footnote{Ibid., p. 57.}

The action described above makes it obvious that even if we had not desired to go to war with Germany, we would have had no other recourse under the President's action. The President's order to attack German submarines undoubtedly contemplated action over a long period of time. The determination of so important an issue should have come about through joint determination of both the President and Congress.\footnote{Ibid., p. 57.}

Through the conduct of our foreign affairs the President might easily bring about a war, and although Congress is free to refuse to back up the President, if he brings such a situation about, it is not likely that this will ever happen. If we are ever attacked by a strong foreign power as a result of the President's foreign policy, there is little that can be done except to fight. It will then be too late
to do anything else.

In summarizing the powers of the President, as provided in the Constitution in comparison with those exercised in practice, several discrepancies are readily evident. According to the Constitution, the power of legislation is vested in Congress. It is not specifically expressed that this is to be the only branch of the government which can carry on this activity, but it seems to be strongly implied. For otherwise, the executive and judicial branches would either have been vested with the same power, or the power would not have been mentioned at all, with the result that any branch of the government could carry on legislative activities.

The President has had delegated to him the power of discretion in determining how laws are to be enforced; but when he is allowed to use this discretion in a manner which amounts to presidential legislation, the result is certainly repugnant to the principle of separation of powers as implied by the Constitution. The continued and increasing delegation to the President, of congressional prerogatives is a tendency away from democracy.

The President has been given wide discretion in determining the meaning of laws passed by Congress. It cannot be contended, however, that the President through his discretion, may interpret the law in a manner which effectually
destroys the intent of that law making body. Such practice on the part of the President is a more flagrant abuse of the principle of separation of powers than that shown in the paragraph above. In the first instance, the President is at least carrying out the will of Congress; in the latter, he submits his own will. The result tends to center the operation of the government in one man. Democratic principles cannot survive in such a situation.

Little need be said concerning the "stewardship theory" expressed by the actions of many presidents. There is no doubt that the main duty of the President is to carry out the will of the people. In a democracy, however, the people may effectively express their will, only through law. Since the people have not expressed, through their law, the Constitution, the desire that the President be their steward, the basing of presidential activity on such a theory, tends away from democracy.

It is the desire of the people that the United States maintain an intelligent, strong, and efficient foreign policy. The President, furthermore, is the logical agent of the government to effect this policy. Can it be contended however, that the national government, and the President are unlimited in their conduct of foreign relations? Can a democracy be maintained if there are two sovereignties in our government, the people in internal
affairs, and the government in external affairs? There is no doubt that if the Constitution had never been written, the government would have exercised all the powers it desired concerning foreign affairs. But by the same token, it could have also exercised all the powers it desired concerning the internal government, until the people resorted to revolution. The point to be remembered is that the Constitution has been written, and it is the supreme law of the land. The provisions in that document apply to both internal and external relations of our government, until the people, through law, speak otherwise.

It is inconsistent to say that the people are sovereign in internal affairs, and the government must abide by the people's law, but that in foreign affairs the people must accept the action of the government, or else revolt against it. The intent of the Constitution was to do away with revolution as a means of enforcing the people's will, by resorting to law. Where there are situations which the people cannot control, concerning governmental action, through law, there exists a danger to our democracy.

It is evident that external sovereignty, in the government, cannot be exercised without affecting the internal sovereignty, in the people. Practice seems to indicate that no matter how seriously our internal affairs are affected by governmental action in foreign affairs, there is nothing
under law that the people may do about it, because under present judicial interpretations, the Constitution does not apply. Thus the only recourse is through the ballot. If through presidential control of our foreign relations, a war is precipitated, the people must wait until the next election to seek a remedy. If war has ensued during the waiting period, the people have no alternative but to fight. It is too late then for the election to do any good. Thus we must not only sanction the past action of the government, in foreign affairs, but in order to conclude the war successfully, we must allow the government even more undisputed control of our internal affairs. It is interesting to note that those powers which the government is allowed to exercise during an emergency, have a tendency later to become the normal.

The conclusion must be that since our democracy is based upon popular sovereignty, any departure from this principle, whether in the internal or external affairs of the government, is a tendency away from democracy as it has been defined. The people cannot be sovereign, if there are governmental forces which tend to affect their protection and security, which they cannot control through law.

It should be remembered that the writer is not attacking the desirability of actions taken by our government, in
its foreign policy. He is merely pointing out the fact that since such relations undoubtedly affect the people of this nation, often meaning life or death, the people should be able to voice and enforce their will, effectively through law. Whether the lack of such control exists as a result of either the people's action or the government's action is irrelevant. The point is that its existence is dangerous to our democracy.
CHAPTER IV

PRESSURE GROUPS AND DEMOCRACY

When a majority of the people encroach upon the rights of the minority, without legal restraint, the resultant form of government is far from our conception of democracy. However, when a minority of the people encroach upon the legal rights of the majority, we are departing even further from democratic principles. Such is the increasing trend now going on in the United States, whether it be in our national, state, or local spheres.

The purpose of this chapter is to examine the long existent problem of pressure group interest versus public interest; to determine if the existence, growth, and increasing effect of pressure groups has brought about departures from firmly established democratic principles.

Some writers point out that there is a difference between the pressure group and the lobby. As far as specific definitions are concerned, this may be true, but for our purposes here, the two will be treated as one, because a pressure group may exist without a lobby, but a lobby seldom exists without a pressure group.

A pressure group may generally be defined as a non-partisan organization of a segment of the people, formed to exert influence upon the agents of the
government, through public opinion, for the enactment or rejection of proposed governmental policy. It may be large or small. It may represent a variety of interests, and it may be national, sectional, or local in scope. Whether the motive be private or public interest, a group seeking legislation or opposing legislation by the leverage of public opinion, is a pressure group.¹

The legal basis for the existence of pressure groups is claimed to be provided in the constitutional provision of the right of petition. Some weight must be given to this concept. It must be contended however, that whereas the constitutional provision meant to provide a remedy for those suffering at the hands of the government, it did not mean that public interest and public welfare should ever be subordinated to private interest and private welfare. We may further add that the principle involved in the existence of pressure groups is not in itself bad; the test of their beneficial or evil characters must be made on the basis of their objectives and procedures.²

Moving now to the actual operation of the pressure groups, we immediately see the connection between these groups and the lobby. The pressure group has as its main

²Ibid., p. 473.
objective, the achievement of some special interest. In gaining this objective, one of its primary methods is to influence public opinion. This may be achieved in a variety of ways. The procedure often used is by a resort to propaganda in the newspapers, magazines, the movies, the radio, and many other means of communication. If favorable public opinion can be created, the greatest hurdle has been passed. The pressure group may get what it wants without going any further. However, to insure more complete success, the pressure groups employ the lobby to work directly upon the legislative bodies or governmental officials through personal contact. Thus the two main weapons of the pressure groups are propaganda, to influence public opinion, and the lobby, to influence the legislature. Through the use of these weapons, the pressure groups hope to achieve some special concession which may not be socially acceptable generally. They do not hesitate in most cases to use every method of agitation and propaganda available to accomplish their ends.

It is not difficult to trace the effect of pressure groups upon the operation of our government. The whole idea behind the use of pressure is that the governmental officials will base their decisions not on the merits of an issue, but rather on the amount of pressure that can be exerted on a given point. The idea is that if the lobby
can generate enough pressure, the favorable action on the part of the government, must automatically follow. The success of such practices is shown in a multitude of cases. What is more, our legislative bodies seem to accept the techniques employed by the lobbyists. At least, there have been few outcries against lobbying practices.

Another idea possessed by most pressure groups is that the mass of the people are unconcerned about details. They have a tendency to think in blurbs, and are moved primarily by simple, emotional ideas. In relying heavily on these characteristics of the people, and the resultant success of such tactics, the pressure groups have shown that they are correct.

It cannot be denied that pressure groups and their lobbyists have a pronounced effect upon our law making bodies in many ways. Referring to the writing of legislation, Crawford said, "It is improbable that a single important law enacted in the last ten years has been written by its congressional sponsor or its nominal author." Administration bills are prepared by experts in the executive departments, and legislation that is independently


inaugurated is almost invariably prepared in the office of a lobbyist. 5

It is often difficult for the general public to recognize the work of the lobbyist in preparing legislation. Lobbyists usually do not broadcast such activity. They prefer to stay in the background. However, minor incidents often provide clues to lobbyist activity, as well as the success of such activity upon our law makers. An example is given by Crawford concerning speeches made in Congress by two Senators during debate on the Reorganization Bill, in the Seventy Fifth Congress.

They spoke at different times. Neither listened to the other. When the Congressional Record came out the next day it was discovered that they had said precisely the same thing in precisely the same way. The texts of the two speeches followed each other word for word, paragraph after paragraph. The speech obviously had been furnished in duplicate by some outsider interested in beating reorganization. 6

Many other instances of lobby activity, though not quite so obvious, are readily discernible.

The question may arise, how can the lobby be so successful in defeating the will of the people as expressed at the polls? The answers are so numerous that the writer will not attempt to name them all. Several brief statements should make it clear why the lobby is so successful.

5 Ibid., p. 21. 6 Ibid., p. 31.
A lobbyist with a $100,000-a-year income can find many ways of ingratiating himself with a Congressman drawing $10,000. Whether a drawing room filled with the socially prominent, a country estate well stocked with liquor or a hotel room adequately equipped with other attractions is indicated, the lobbyist has the wherewithal and sometimes the ingenuity.\(^7\)

Another of the favorite methods employed by the pressure groups is to see that men favorable to their interest receive a place on the national committee of the party in power, or, are elected to the legislative bodies or other high government offices. They thus make sure that their interest will be taken care of. Many of our regulatory commissions have been run by officials who are merely the reflection of the very interests they are supposed to regulate. The election of such men can usually be brought about by lavish expenditures of money for campaign aid, plus floods of propaganda to confuse the issues, and sway public opinion.

If the lobby is not successful in having favorable men elected, it then resorts to putting the pressure on those who are elected. This usually means burying the legislator in a deluge of telegrams and letters, plus threats of what is to happen to him in the next election if he does not cooperate. A few of the strong men in our legislative bodies are able to weather such a storm. Most of them

\(^7\)Ibid., p. 14.
are certainly impressed, if not utterly panicked by it. 8

One might ask, why not let the general public resort to the same type of tactics? The public can write letters, send telegrams, and if need be go before the legislatures in huge numbers. Will not this have a resounding effect upon the legislature? Crawford very clearly and correctly answers these questions, as follows:

Congress may be temporarily frightened but it is seldom influenced by the demands of the underdog citizen. It is the well dressed and the well heeled, who can afford to entertain, who have the most effect on legislation. They can come in droves, but they are never called a mob and no one ever complains that they are trying to intimidate Congress. On the contrary, when the poor stage a mass demonstration, there is always some brave representative or Senator to make the stock Congress-cannot-be-frightened speech. He shames his colleagues and the mass demonstrations usually have the reverse of the desired effect. 9

Pressure groups and their lobbyists have become so successful in running our legislative bodies, to the extent that the representative spirit of this branch of the government has largely disappeared. The ideas indicated by the action of one large pressure group, concerning the law making body was described by a Congressman as follows:

Their plainly shown attitude was that the American Congress was considered by them as their legislative department and was viewed with the same arrogant manner in which they viewed their other employees, and that those legislators who dared to

\[8\text{ Ibid., p. 5.}\]
\[9\text{ Ibid., p. 45.}\]
oppose them would be disciplined in the same manner in which they were accustomed to discipline recalcitrant employees.\textsuperscript{10}

What is the present effect, and what will be the future results if the pressure groups are allowed to continue their control of our government? Many of our important governmental officials have expressed alarm concerning the power of the pressure groups. Hugo L. Black, while a member of the Senate, and leader of a committee investigating the lobby, once said: "Contrary to tradition, against the public morals, and hostile to good government, the lobby has reached such a position of power that it threatens government itself."\textsuperscript{11}

Through the unscrupulous methods used by the pressure groups, with the resultant effect upon our law-making bodies, the people are losing control of the government through the growing ineffectiveness of their ballot. In the first place, issues are so muddled by the pressure groups through propaganda that it is practically impossible for the people to determine what they are voting for. Secondly, pressure groups hide major issues by appealing to existing prejudices and the emotions of the people. Lastly, after governmental officials are elected, the pressure groups continue their work upon those officials until finally the

\textsuperscript{10} \textit{Ibid.}, p. 49. \quad \textsuperscript{11} \textit{Ibid.}, p. 4.
desires of the people, expressed at the polls, are completely destroyed through the selfish, often corrupt tactics, of the lobbyists.

The people have lost faith in the legislative branch of the government. The growing success of the pressure groups has made it necessary for all groups, even those carrying on activities which are usually considered to be the guardians of our democratic way of life, to have to resort to pressure to exist. It seems that every act of our legislative bodies is based upon pressure, with the result that the strongest pressure groups, regardless of how small a minority of the people, are able to control the government, and get what they want, at the expense of the general welfare.

Something is wrong, in any government that claims to be a democracy, if the people, after having expressed themselves with their ballot, still have to resort to pressure to get what they want, or else do without. Usually, the latter will be the result, because it is impossible for the mass of the people to form a pressure group. They do not have the necessary knowledge of the functions of government, the organization, or the money to effect a strong pressure group. What then, is the possible result of a government dominated by the minority whose legislative branch does not represent the people's will, but which is
run by another invisible legislature, which is neither elected, nor responsible to the general public? Such a condition cannot long exist and continue to grow as it has in the past few years, if this country hopes to maintain a democracy.

The institution which is of central importance in any system of democracy is the representative assembly. Through this means it has been possible to translate the democratic ideals of the town meeting into a practical plan for governing millions under a common self-rule. The representative assembly is the basic instrument for transforming the weight of popular opinion and public will into governmental policy. It must function properly if we are to preserve the health of the democratic process.12

As long as our government officials carry out the will of the people, expressed spasmodically at the polls, and continuously through the Constitution, there is little danger that the people will bargain away their democratic freedom. If on the other hand, some of our basic democratic principles are lost, either through poorly designed political machinery, or practices carried on by minority groups and the government, it becomes increasingly difficult for the average citizen to tell whether the fault lies with

democracy itself, or whether it is the undemocratic practices which are carried on within the democracy that are to blame. If the average citizen feels that it is the former, he may demand some other form of government. If he feels that it is the latter, he may, through his disgust of such undemocratic practices and inability to do anything about them, become an easy victim to some ideology which is contrary to democracy. In other words, if the citizens of this country in expressing their will, find that time and again that will is ignored and betrayed by governmental officials through influence of minority pressures, they may conclude that a democracy is not so successful after all.

The pressure groups and our government should realize the dangerous tendency they are helping to bring about. Discipline must be practiced by both, to restore to our government the basic democratic principles of majority rule through law.

The trouble with America is not a lack of basic democratic principles, but rather it is the constant destruction of public interest by selfish minorities, working through lobbyists and propaganda to mislead both the people and their representatives, which is destroying the democratic way of life, both in practice, and in the minds of the people.
CHAPTER V

DEMOCRACY AND THE ELECTORATE

There are three methods which are usually listed in referring to the people's control over the government. Two of them, the Constitution and control by pressure, have already been discussed. The last method of popular control to be discussed in this thesis is the ballot.

For many years the people of this country have struggled for a broadened suffrage. Yet, after having achieved their desire, it is difficult to understand why more people do not take advantage of their voting opportunities. A democracy should be based upon the will of all the people, but history has taught us that not all the people care to express their opinions on matters of government. Furthermore, it is not always easy to determine the people's will even after it has been expressed through some of the now existent means for that purpose.

The writer will attempt to show in this chapter the effects of certain trends that have developed in the electorate. Attention will be given to the problem of non-voting, effects of certain party practices, and the possibilities of the adequate expression of public
opinion through the ballot. These matters cannot be classed as constitutional questions, since they concern actions of the people, thus we cannot call the defects to be discussed here, tendencies away from democracy, in terms of constitutional violations. But, we may class certain trends, which shall be pointed out, as dangers to our democracy. The writer therefore plans to examine some of our electoral problems and practices to determine whether their existence constitutes dangers to our democracy.

Non-voting is a problem in our democracy which has existed in varying degrees for decades. It is difficult to ascertain the effects of non-voting, but the very fact that all people do not vote shows a lack of interest which might be harmful to our democracy. Also, as long as the percentage of non-voters remains as high as it now is, we cannot claim to have a government by the people. The ballot is a method of expressing public opinion, and a means of controlling the government. Since all of us are subject to actions of the government, we should avail ourselves of the opportunity of expressing our opinions. It would be interesting to observe public reaction if the government were to deprive nearly half of the now eligible voters of their rights to vote. Yet, non-voting has the same result. When the people voluntarily deprive themselves of their vote, the result is about the same as if
it had been brought about through governmental action, the only difference being that the ballot may be considered as "the gun behind the door", regardless of whether or not it is used.

It is difficult to determine the percentage of qualified voters who do not vote. Varying suffrage requirements such as residence, literacy, poll tax, criminality and many others, make it difficult to determine those actually qualified to vote.\(^1\) In general, we may say that participation in presidential elections runs from fifty five to seventy per cent of the total number qualified to vote. Percentages in other elections run much lower. Up until 1936, the long run trend showed a decline in overall voting participation. Since that time, the percentage of qualified voters, who vote, has risen to a somewhat higher level, but there is no indication that the trend will continue upward.

According to Gosnall, participation in presidential elections declined from 86.2 per cent of total qualified voters in 1892, to a low of 56.9 per cent in 1920. The percentage then started rising and reached 67.5 per cent in 1928.\(^2\) That the 1928 percentage has continued in the

\(^1\)V. O. Key, Jr., *Politics, Parties and Pressure Groups*, p. 607.

main, is shown by the participation in the two most recent presidential elections. The number of potential voters in 1940, uncorrected for various disqualifications, was 83,996,629.\(^3\) Those who voted that year numbered 49,815,312.\(^4\) After allowing for those disqualified for various reasons, based on average percentages used by Gosnell, it is indicated that slightly over sixty nine per cent of the qualified voters voted in 1940. In 1944 the total popular vote was 48,926,170.\(^5\) Based on the 1940 number of potential voters, corrected for disqualifications, the percentage of participation for 1944 runs roughly around sixty seven per cent.

The percentage of participation is lower in state elections than in presidential elections. It is still lower in most state primaries depending upon the comparative strength of the parties, and participation is lowest of all in city elections.\(^6\) One cannot say definitely why this condition exists, but it is possibly brought about by the heated campaigns, glamor, and excitement usually connected with presidential elections, with the decline of these factors as the geographical

---

\(^3\) *World Almanac*, 1943, p. 468.


\(^6\) V. O. Key, Jr., *op. cit.*, p. 608.
divisions become smaller.

It is evident that local self government, if based upon electoral participation, is declining. If the people refuse to participate in their local governments which are closest to them, how long will they continue to participate in the national government which is farthest away? Furthermore, if the people cannot control those who govern them locally, there is a possibility that they will not long control those who govern them nationally.

The reasons for lack of participation in elections have been dealt with fully by Merriam and Gosnell in their study of elections in Chicago. The following reasons were given by the 5,310 non-voters covered in the study. Physical difficulties kept 25.4 per cent of those listed above from the polls; 12.6 per cent listed legal and administrative obstacles; disbelief in voting claimed 17.7 per cent; while 44.3 per cent listed inertia and general indifference as their reasons for not voting. It is significant that the largest percentage of non-voters failed to vote because of conditions which were not beyond their control. These were the ones who gave as their reasons such things as general indifference, indifference to last election, neglect, ignorance or timidity regarding

---

7 C. E. Merriam and H. F. Gosnell, Non-Voting and Methods of Control, p. 49.
elections, disbelief in women voting, and disgust with politics.

The effects of non-voting are not easily determined. There are several possible results, some good, and others which are not so good. In the first place, small participation in state, county, and city elections might make it possible for the party organization, or any small group of individuals to manage the election outcome. Political machines thrive where voting participation is small. On the other hand the cry of "machine politics" is not always merited, for in many instances, those who make up the so-called machine are the most politically active and leading citizens of the community. In general, we may say that in order to determine the real effects of non-voting, it is necessary to know what sort of people have resigned their political functions. If non-voting is widespread among all classes of people, the effect would be much more important than it would be if the non-voting were limited to those whose lack of knowledge, indifference and prejudice would make the desirability of their vote questionable.

A few facts concerning non-voting are clear. Active participation by all those eligible to vote may not necessarily make for a better government in every case. On

---

Key, op. cit., p. 609.
the other hand, if we have a continued decrease in the number of people who vote, there is a danger that our government will not be based upon the majority of public opinion, which is necessary in a democracy.

The people, through lack of expression of their will through the ballot, give an added advantage to the agents of government to substitute their own will. Through decreasing interest, on the part of the people, the government can more and more run things as it pleases, to the extent that the people may be dependent upon the will of the governors, rather than the governors being dependent upon the will of the governed, as it should be in a democracy. From this viewpoint, the lack of voting interest which has prevailed in the past, and which indications show will continue in the future, may threaten the very existence of our democratic state, as a government based upon popular sovereignty.

So far in this discussion, we have dealt only with the effect of non-participation in elections concerning governmental officials. Of more importance, concerning governmental principles, are the trends which exist concerning constitutional changes. It is readily evident that elections concerning constitutional formulations or changes should be the most important, and precipitate more popular participation than any other. The
Constitution is the people's law, and since its provisions continuously affect the relations to be maintained by the government to the people, any changes in that fundamental document should arouse the interest and participation of all those qualified to voice their will. Experience teaches us that the reverse has been prevalent in most cases. It should be noted that we are here referring to amendments to state constitutions by direct popular vote and not the national Constitution, which is amended either by the state legislatures or by state conventions.

A few examples of electoral participation in voting on constitutional amendments will suffice to prove that in deciding such important issues, the people seldom voice their will in very large numbers. Stewart and Clark, in discussing participation of voters in Texas on constitutional amendments, point out that in almost every instance, the vote has been small, whether the amendments were approved or defeated. There have been only two instances in Texas where the vote on constitutional amendments has been anything like representative of all the qualified voters. Both concerned prohibition amendments, one in 1887 and the other in 1911. The large vote on these two occasions is attributed to the fact that these amendments came from the people, that there was a
popular demand for the elections, and that long and intensive campaigns were waged in both instances.  

In most cases, votes cast on constitutional amendments in Texas average around twenty per cent of the total number of qualified voters; however, there are many instances in which no more than ten per cent take part. Texas is certainly no exception, because many other states show about the same percentages in votes on constitutional questions. It is difficult to explain this inertia in voting. Perhaps the people are not interested in changes to their Constitution, because they do not understand the changes that are proposed. At any rate, non-voting on constitutional changes is a serious problem, because our democracy is dependent upon our constitutions. Therefore a lack of interest in the Constitution, is a lack of interest in democracy.

When voting on constitutional amendments is as small as that mentioned above, can we say that the people have voiced their will? When an amendment is either accepted or defeated by only twenty per cent of the people, it cannot be maintained, in either case, that the will of


the people has been expressed. Yet, it is only through the Constitution that the people may express their will and have it enforceable. When the people lose interest in their Constitution and its proper enforcement, democracy begins an immediate decline. If democracy is to be maintained, and be worthy of its name, it must command an active interest and participation of a large majority of the electorate.

The people of this country have long relied upon their ballot as a means of controlling the government, and of expressing their desires concerning the way they want the government to operate. There are a few who assert that so long as we have an expression of the people's will through the ballot, we will maintain our democracy, regardless of what happens to other means of keeping our democracy secure. In determining the validity of these ideas, it might be well to evaluate the importance of the ballot as a method of expressing popular will and preserving our democracy.

It is quite evident that the popular vote in national, state, and local elections is the most valuable index to public opinion, because it is the most direct way that all the people may express their ideas concerning proposals which are submitted by the various candidates. However, elections are not infallible as expressions, of
public will, because of the tendency of the voters to confuse issues with men. When people vote, they often vote for the candidate on the basis of his personality and influence rather than on the principles for which the candidate stands. A tendency to choose between men, and not issues is an improper method of expressing public opinion concerning governmental issues. 11

How is the vote of the people to be interpreted? Most candidates feel that when they win an election, the result is a blanket endorsement, by the people, of their entire program, when actually this may not be the intent of the people at all. It may only mean that the people like one candidate's program more than another, but not to the extent of endorsing every act that the successful candidate wishes to initiate.

When the successful candidate interprets his victory to mean that his supporters will approve of everything he does about all issues and under all circumstances, the voter can only stand and wonder. Elected officials claim a mandate from the people, yet the people seldom have an opportunity to be heard. 12

Furthermore, it cannot be maintained that the ballot is a measure of the people's opinion on governmental

11 George Gallup and Saul F. Rae, The Pulse of Democracy, p. 18.
12 Ibid., p. 133.
issues, because in many instances the voter does not know what issues are involved. He merely votes for a candidate who claims to represent the popular will, when in most cases, the popular support the candidate relies upon has been created by techniques, ranging from simple deception to the most vigorous forms of vote getting.¹³

There are some who maintain that an election cannot be an expression of public opinion. Walter Lippmann stated his ideas on the matter as follows:

It may be objected at once that an election which turns one set of men out of office and installs another is an expression of public opinion which is neither secondary or indirect. But what is an election? We call it an expression of the popular will. But is it? We go into a polling booth and mark a cross on a piece of paper for one of two, or perhaps three or four names. Have we expressed our thoughts on the public policy of the United States? Presumably we have a number of thoughts on this and that with many buts and ifs and ors. Surely a cross on a piece of paper does not express them. It would take us hours to express our thoughts, and calling a vote an expression of our mind is an empty fiction.¹⁴

We may conclude that elections can never be the sole channel for the expression of public opinion, although at particular times, they are probably the best single measure of the will of the public that is obtainable.¹⁵

---

¹³ Ibid., p. 20.
¹⁴ Walter Lippmann, The Phantom Public, p. 56.
¹⁵ Gallup and Nae, op. cit., p. 21.
One other problem which should be considered in this chapter is the relationship of our party organization and practices to the people in the matter of choosing governmental officials. When the people vote for a candidate, does this mean that they are voting for the man whom they feel is the most capable for the job? To answer this question we must ascertain what voice the people have in determining who the various candidates will be. It is therefore necessary to examine the nominating convention system used by the major political parties.

It is generally realized that neither parties, nor the present methods employed by them to select their candidates, is provided for in the Constitution. The whole procedure is based upon custom, which grew out of dissatisfaction with the selection of candidates by caucus. However, in most instances, the convention system of nomination has developed characteristics which are just as undesirable as those experienced in the caucus. The faults of our present nominating system seem to be adequately explained by Gallup and Rae as follows:

Through the years the convention system continued to reveal the impotence of public opinion to control the party machines and the political bosses. The proportion of party voters who voted for the convention delegates was never large. As the voting population increased with successive franchise extensions, the number of delegates transformed the convention into a mass meeting, and gave greater scope to the manipulative power of the insiders. The lack of power to
the delegates and the people whom they were supposed to represent, left a gap which was quickly filled by the active minority of politicians and office holders who made their nominations almost in private session and later announced their decisions for the clamoring group of delegates to ratify.16

It is evident that in the choice of several of our most important governmental officials, the public does not determine whom the candidates will be, write the platform, or formulate the party's policies. They merely accept the action of a small minority group in these matters of vital importance to our democracy.

The trend toward the declining functions of nominating conventions and the disgust of both the public and the convention delegates with our present nominating procedures is pointed out by Agar, in referring to the Conventions of 1936, as follows:

There was no choice, in the way of badness, between the Republican and Democratic conventions. Both were unworthy spectacles which might have been invented by a Fascist satirist to illustrate the degradation of democracy. There was more enthusiasm at the Democratic convention; but, if possible, there was more vulgarity....

The delegates showed signs of being ashamed of their own immoderate antics. They wondered whether the way to run a great political party is to get drunk and ride donkeys into hotel lobbies, or to scream hideously for half an hour because the chairman has just announced (what everyone has known for a month) that Senator Joe Robinson (or Senator Steiwer) is about to

16 Ibid., p. 136.
make a speech. The delegates knew there was something wrong. They knew they ought to be doing serious work. Yet there was no serious work to do, so they took refuge in idiocy.

The delegates should not be blamed for the raucous farce. They were the usual collection of local party workers, of postmasters and ex-postmasters, with a scattering of more disinterested citizens. Had they been asked to help make anything in keeping with the high-flown language that was being used by the speakers, they would have tried to respond. But the position of the average delegate at a national convention has neither dignity nor sense....

...The lesson of the 1936 conventions is that the professional politician must devise some new machinery for doing the necessary work of organization.... The time has come when the national convention as now conducted breeds a vicious cynicism both in the participants and in the beholders. Such a mood is a threat to the democratic system. For the wages of cynicism is death. 17

The evils of our present system of party nominations must be remedied if our democracy is to operate as an expression of the people's will. We must return to the democratic philosophy stated by Theodore Roosevelt, as follows:

The right of popular government is incomplete unless it includes the right of the voters not merely to choose between candidates when they have been nominated, but also the right to determine whom these candidates shall be. 13

In summarizing the effectiveness of the electorate in our system of democracy, several important factors are

17
Herbert Agar, Pursuit of Happiness, p. 129.

13
Gallup and Rae, op. cit., p. 137.
evident. Non-voting has been a serious defect of our political system, and there is no indication that this condition will be improved in the near future. It is difficult to measure the effect of non-voting to determine whether such a growing tendency is necessarily good or bad. It is often argued that non-voting is not a problem; in fact, it may be a good sign, since we may conclude that those who do not vote are satisfied with things as they are. On the other hand, the growing indifference of the people to political and governmental problems, and the distrustful attitude of the people concerning politics, poses a serious danger to our democratic way of life. Schlesinger and Eriksson described the trend and effect of non-voting as follows:

Like a creeping paralysis, the apathetic attitude has spread over the body politic, steadily enlarging the area of its devastation and waxing in vigor with the years. One trembles to contemplate the direction of this heart-line of democracy in future elections.19

If democracy is to live up to its name, and all that it stands for, it must merit the interest of all the people. Until the day comes when this ideal is realized, we cannot truthfully say that we have a government by the people.

Under our present system of presidential nominations by the parties, we cannot say that the people are actually choosing the candidates. They merely vote, either for, or against, those that are nominated. In order for the electorate to exert its utmost influence in the election of public officials, they must do more than vote for the various candidates; the people must have a voice in determining what candidates will be available from which to choose. The people cannot maintain an interest in governmental issues if all they can do is say "yes" or "no" to a proposed policy, without helping to formulate that policy.

Elections have always been considered a true expression of democracy. It is true that unfettered elections are basic to democracy as we know it; but it is doubtful that elections produce the democratic results that are often attributed to them. Even if elections involved the participation of all the people, with our present practice of choosing between men and not issues, and the increasing use of subterfuge, propaganda, and numerous vote-getting techniques, it is doubtful if they would really express the will of the people. Elections merely provide a spasmodic expression of choice by part of the people. Such expression cannot direct our governmental officials continuously. All that can be achieved through elections is an occasional intervention in governmental policy.
With the increased centralization of government, and the growing complexities involved, the average person is becoming less and less able to shoulder his responsibilities in our democratic system, and is becoming more bewildered at his inability to express himself. The lack of knowledge and consequent lack of interest by the electorate is a dangerous tendency to a form of government which is based upon popular sovereignty.

A statement by Walter Lippmann very well expressed the present day confusion of the electorate, as follows:

The private citizen today has come to feel rather like a deaf spectator in the back row, who ought to keep his mind on the mystery off there, but cannot quite manage to keep awake. He knows he is somehow affected by what is going on. Rules and regulations continually, taxes annually, and wars occasionally remind him that he is being swept along by great drifts of circumstance.

Yet these public affairs are in no convincing way his affairs. They are for the most part invisible. They are managed, if they are managed at all, at distant centers, from behind the scenes, by unnamed powers. As a private person, he does not know for certain what is going on, or who is doing it, or where he is being carried. No newspapers report his environment so that he can grasp it; no school has taught him how to imagine it; listening to speeches, uttering opinions and voting do not, he finds, enable him to govern it. He lives in a world which he cannot see, does not understand and is unable to direct.20

Many people have come to believe that the expression of popular sovereignty through the ballot is an empty

20 Walter Lippmann, op. cit., p.
fiction. A continued increase in such a trend, which is indicated by many of our present practices and tendencies, can have no other result but a decrease in the effectiveness of democracy, because the ballot is essential as a political control in a democratic system of government.
CHAPTER VI

CONCLUSIONS AND RECOMMENDATIONS

The writer is convinced, as a result of this study that there now exist many instances where we have departed from basic democratic principles which are necessary to the proper operation of our government if we are to continue calling it a democracy, as that term has been defined. Undoubtedly, there will be people who do not agree with the writer's line of reasoning used in this thesis. Furthermore, there will be those who feel that there exist certain tendencies away from democracy which have not been mentioned here. However, it should be kept in mind that the writer has not sought to enumerate or evaluate all the practices of the people or the government which might be considered repugnant to democracy. Rather, the writer has sought to consider only those issues and practices whose consequences concern the basic principles of our democracy. The writer has tried to deal with these matters in a manner as scientific as possible, with an open mind, eliminating all ideas or opinions which seem to be based upon prejudice, and which cannot be supported by facts.

It should be remembered that the writer, through criticism of the practices mentioned herein, is not
necessarily seeking to determine whether these practices were or were not desirable, as a means of effecting immediate ends. Instead, we have tried to determine what may be the future results of a continuation of such practices. If these results show tendencies of decreasing the effectiveness of our democracy, or possibilities of destroying it entirely, it is time that we recognize such tendencies and possibilities, and seek to remedy them as soon as possible. We have the best form of government in the world and it is our responsibility to see that it remains so. Democracy can only be maintained through corrections of evils that arise, rather than ignoring them by retreating behind the flimsy fiction that all is well, or saying everything will work itself out if given enough time.

In order to determine the governmental trends now developing in this country, we need to give close attention to two primary issues. First, how is the government being conducted, and what is it doing? Second, how does the action of the government affect the people, and what steps are being taken by the people to control the government and to insure that it will be efficiently operated?

There can be no disagreement on the fact that our
governmental system has become greatly centralized in the past fifteen or twenty years, with the Federal government exercising powers heretofore unprecedented. This centralization has been brought about largely through judicial interpretation of the Constitution to sanction laws and acts of the government which previously had been considered a violation of that document. The Federal government, through its increased power over commerce, taxing and spending, has reached the point where its action under these powers are practically unlimited. There are several serious potential consequences which have been brought about by the decisions of the Supreme Court concerning the scope of the above mentioned powers.

Judicial interpretation of the commerce power, as vested in Congress by the Constitution, has been so exercised that Congress may now regulate practically all production and consumption of commodities that are in any way connected with or affect interstate commerce. There is hardly any activity now carried on which cannot be construed to fit the above classification. The result of this increased power in Congress has destroyed many functions specifically reserved to the states by the Constitution. Therefore, the power of the states to control their intrastate production and consumption has become almost totally subjected to the will of Congress. It cannot
be argued that this was the intent of the people in writing the Constitution.

The result of deviations from the Constitution must mean that that instrument is decreasing in importance as a legal means of controlling governmental action. When the people have spoken through law to limit the government, but have their will set aside through judicial decisions, the result tends to destroy popular sovereignty through law, as well as to destroy the people's faith in the Constitution.

When government ceases to regulate and starts to manage, the line between freedom and despotism has been crossed. Whenever the law no longer holds the confidence of the people and becomes an object of scorn and ridicule, then the government itself loses the confidence of the people and begins to disintegrate, and unless the condition is corrected, and confidence restored, our democratic ideas will lose their virtue and the ideals upon which the government of the people was founded will be dissipated.¹

The writer concludes that the power over commerce, now exercised by Congress, through judicial interpretation of this portion of the Constitution, violates the principle of separation of powers between the Federal and State governments, and effectually eliminates state control over many of those activities reserved by the Constitution.

¹ Oscar L. Young, "Frontiers of the Constitution," *Litan speaches*, VIII (April 15, 1942), 144.
Through broadened taxing and spending powers, the Federal government has been able to go even further toward centralization. Here again, it has been with the consent of our courts that portions of the Constitution have been so construed to increase the power of Congress. Congress may now tax and spend with practically no constitutional limitations. The result has been a further reduction of those powers reserved to the states. Furthermore, the people have come more and more to depend upon the national government, to the extent that our government is becoming dangerously centralized in Washington. The trend is adequately described in the following statement:

The fact therefore is that the more local self-government we have in the United States, the stronger will be the Union. The more self-reliant, self-dependent, self-sustaining the various states, the better it will be for the government in Washington.

When every state, every county, every municipality sticks its snout into the Federal trough, it bodes ill for the survival of democracy.

When all repositories of power in a nation, the town meeting, the municipal assembly, the state government, surrender their authority, or a large share of it, into the hands of the central government, the distinguishing note of a democracy tends to be lost. We seem to live and move and have our being by the grace of the government at Washington. It is unhealthy. It is a danger. If continued, it will be fatal.²

We must conclude, in viewing the power of Congress

²J. M. Gillis, "Democracy in Decline," Catholic World, XIX (March, 1945), 484.
over taxing and spending, that the constitutional provisions set up to limit these activities, have been transcended. Our government in this respect has changed from one of limitations to one that has doubtful limitations. Furthermore, the basic principle of democracy, namely, local self government, has almost totally disappeared. No longer are our state and local governments looked upon as necessary parts of our democracy. They have been reduced in many instances to mere administrative agencies, or puppets of the Federal government. It is dangerous, in a democracy, for the people to allow increased power to that government which is most distant, and over which they may exert less control. Yet that is exactly what is happening. The people have not directly brought this situation about, but through the failure to set up and demand proper controls, they have allowed the government to bring it about. The situation is described by Eldean as follows:

The basic trend straining the democratic process is the steadily accelerating movement in the past few decades of shifting responsibility to a distant government. Whatever its causes, its effect upon the individual's active expression in a democracy has been devastating.3

The recent trend in judicial interpretation of the

3 Fred A. Eldean, "War's Challenge to Citizen Concern with Government," Vital Speeches, VIII (November, 1941), 49.
Constitution, has in many ways reduced that fundamental law to ineffectiveness as a basis for our democracy.

Another trend in the operation of our government, which is straining the seams of democracy is the increased power allowed to the executive branch. There are undoubtedly several legitimate factors that have brought about this trend, but we cannot acquiesce in the continued exercise of such powers merely because they were needed and useful under particular circumstances. Executive powers, born during times of emergency, have the peculiar characteristic of remaining with us, irrespective of whether they are still needed. Practices inaugurated for emergency purposes have a tendency to become the routine.

The President, according to the courts, is not limited in his action, to specific grants of power by the Constitution. And, even those powers which are granted have been so construed as to make them almost limitless. Thus the Constitution, as a legal limitation upon the actions of the President, has largely ceased to exist. The people, as a result, must turn to the use of the ballot and the pressure group to try to get what they want.

The result of increased power in the Executive Branch of our government has largely eliminated the constitutional provision for three separate and distinct branches of government, with each carrying out a specific duty. No
longer is the Legislative Branch the only one which may make the laws. The Executive Branch now exercises that function in many instances. No longer is the Judicial Branch the only one which interprets the laws. The Executive Branch, through a multitude of administrative courts, over which judicial review is not provided, has done much to usurp the functions of our judicial system.

The following results of increased executive power are significant. First, the separation of powers among Legislative, Executive, and Judicial Branches has in many instances been removed. Consequently, the principle of checks and balances among the branches of government has been partially destroyed. Lastly, the Constitution, as an instrument of limitations upon the Executive Branch, has ceased to operate in the capacity that it was intended.

There are several recommendations which may be made which would possibly affect a decrease in executive power, and make its operation more consistent with our ideas of democracy. The Executive Branch should cease the policy of expanding its powers through interpretation. Congress should cease delegating its legislative powers to the Executive, and should be more watchful of the execution of those powers which it may constitutionally grant. Furthermore, Congress should demand that the laws be executed in a manner consistent with the will of Congress
in passing the law. Provisions should be enacted which would make administrative decisions subject to judicial review. Lastly, the Executive Branch should confine itself in its actions, to the powers that are constitutionally granted, or provided by Congress in pursuance of the Constitution.

The activities of pressure groups are posing a serious threat to our democracy. The writer does not mean to imply that the principle behind the employment of pressure groups is necessarily bad; but, many of the practices carried on by pressure groups and their lobbyists are tending to destroy our democracy. When a minority group, through the use of propaganda, intimidation, financial aid, and lobbying, can achieve special advantages which are injurious to the public as a whole, democracy cannot be said to be operating properly. Ours is a government which is supposedly based upon public welfare, and any deviation from this principle, at the expense of the people as a whole, must be considered as a tendency away from democracy.

Several propositions have been offered for controlling pressure groups. Speeches have been made condemning the practice, investigations have been made, and laws have been passed. None of these have so far seriously hampered the practice. We are faced with the problem of regulating possibly evil practices, without destroying the desirable
principle upon which the practices are based.

It seems that our success in decreasing the evils of the pressure groups will be dependent upon widespread knowledge of their practices by those who may do the most to alleviate and regulate them, namely, the people. If the people would exercise closer observation over their governmental representatives, and demand that public interest receive precedent over minority interest, the problem of pressure group practices would be largely eliminated. Unless these remedies are inaugurated, and if the control of the pressure groups over our government continues as it has in the past, the result might well be a destruction of our democratic system. When the public will is continuously made a slave to the selfish interests of pressure groups, the results are far from democratic, and may lead to demands for some other form of government. This could lead not only to a destruction of the people’s will, but also to the abolition of the pressure groups.

The ballot is basic to our democracy, but the ballot alone will not maintain a democratic government. Many governments, both now and in the past, have provided for suffrage in varying degrees, but, it cannot be claimed that this alone makes for democracy. In order for a ballot to be effective, it must be cast under conditions
that will insure its use as a free expression of public opinion.

We, therefore, are confronted with the question, how effective is the ballot in our democracy? We must answer the question by saying that the trend has been toward a decreasing importance of the ballot, both as a means of governmental control and as an instrument for the expression of popular opinion. This decreasing importance of the ballot has been partially brought about through non-voting, and lack of interest in the political aspects of our government. If democracy is to be a government of all the people, it must merit the participation of all the people. We cannot measure the losses to our democratic system through the increase of non-voting, but we may be sure that the increasing lethargy of the people in matters of such importance as the operation of our government, is not a healthy sign for a continuation of democracy.

Other reasons for the decreasing effectiveness of the ballot have been brought about by party practices and the tendency of the people to base their political decisions on personalities rather than on governmental issues. Therefore, after an election is held, and the people have expressed their preferences through the ballot, it is often difficult to determine just what is meant. As long as the
voter can be swayed by personalities, personal influence, propaganda, party affiliations, and prejudices, we cannot maintain that the ballot is either an effective method of control of the government, or an adequate expression of the public will.

In summarizing our findings as a result of this study, we may say that there are several important tendencies and trends which have developed in our democracy. Our legal control of the government, through the Constitution is becoming less effective. Therefore, we are losing the only positive means through which the people may express their will. In other words, the will of the people, expressed through law, which is a basic principle of our democracy, is gradually being destroyed. The causes may be attributed to both the government and the people. The government officials, through interpretation of our basic law have largely removed its limitation upon their actions. The people, through lack of interest, participation, and knowledge, have allowed the agents of government to take the above action. Too much time should not be spent in deploring the situation. We should immediately turn our thoughts to the seeking of a remedy.

The people are wrong in assuming that the ballot and the lobby are all that we need to control the government. Past experience has taught us that these controls are
necessary, but may often be ineffective. There is a possibility that we can remedy the defects of the lobby and the ballot, but this alone is not enough to insure democracy. We must not forget that these political controls are provided by our legal control, the Constitution. If parts of the Constitution may be reduced to ineffectiveness, by the same token, there is a possibility that all of it might be eliminated or ignored. Then the Constitution is lost, we also lose the right to vote, and the right to petition the government for redress of grievances. This statement may be proved by reference to the Constitution.

The right to vote and certain provisions concerning voting are either mentioned or referred to indirectly several times in our Constitution. Some of the provisions are as follows: "The House of Representatives shall be composed of members chosen every second year by the people of the several states,..." Although voting and elections are not mentioned directly in this provision, they are certainly implied because if the people are to choose Representatives, it may be assumed that the method to be used will be the ballot.

Another provision in Article I concerning elections

---

4

is as follows: "When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies. Since the vacancy mentioned concerns representatives, and since in the first provision quoted above, the people are empowered to choose the representatives, we must assume that the election which is authorized, will be a popular election.

Elections are mentioned again in Article I, Section 4, Paragraph 1 of the United States Constitution, as follows:

The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the place of choosing senators.

Although the provisions of the Constitution quoted here do not deal directly with suffrage, it is quite clear that the principle of the people's right of expression through the ballot was recognized and practiced. In fact, the Constitution was adopted through a plan of popular participation, based upon the voice of the people in selecting delegates to the ratification conventions.


To prove that the right to vote is provided by the national Constitution, we may further cite the provisions of the Fourteenth, Fifteenth, and Nineteenth Amendments. The pertinent part of the Fourteenth Amendment is as follows:

... But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a state, or the members of the Legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty one years of age in such state.  

The Fifteenth Amendment further broadens the suffrage as follows: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude." The last suffrage provision in our Constitution is found in the Nineteenth Amendment, which reads as follows: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex."

---

7 Ibid., Amendment XIV, Sect. 2.
8 Ibid., Amendment XV, Sect. 1.
9 Ibid., Amendment XIX, Sect. 1.
After observing all the constitutional provisions quoted herein, we must conclude that the right of the people to cast a ballot is provided and protected by the Constitution. In order for the people to maintain this right, they must insure the maintenance of the Constitution.

Although the practices carried on by pressure groups and their lobbyists are often condemned, this writer being no exception, we must keep in mind the fact that these practices, no matter how evil the results, are based upon a constitutional principle. The legal basis for such practices is provided by the Constitution as follows:

Congress shall make no law respecting any establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.\(^{10}\)

It is true that pressure group activity and the ballot are only political controls, and as such are limited in regulating the actions of the government. Their limitations, however, partially result from the way they have been operated. They must be considered as necessary to our democracy because they provide for an expression of popular sovereignty which cannot be achieved through the Constitution. Furthermore, they are provided by that supreme law.

\(^{10}\) *Ibid.*, Amendment I.
In conclusion we may reiterate a statement made in the first chapter of this thesis; namely, that a democracy must be based upon popular sovereignty through law. Popular sovereignty through law can only be achieved through a constitution. However, since the people cannot include all the details necessary for day to day operation of the government within a constitution, there is a necessity for political controls. Therefore, the Constitution must set up basic principles necessary for achieving a democracy, and provide that more detailed decisions be made through political procedures. Political controls are usually exerted spasmodically, but the Constitution operates continuously, and must continue to do so if a democracy is to survive.

We must therefore conclude that the Constitution is the basic factor in our democracy. Fluctuations in the effectiveness of political controls may be tolerated, but a loss in the effectiveness of any part of the Constitution is dangerous. A further increase of the trend in that direction may be fatal.

The writer does not mean to imply that a Constitution can be written which will satisfy all the needs of our democracy for centuries to come; nor do we say that action taken by our government, which seems to violate our Constitution, has been undesirable. However, since the
Constitution provides a method for its amendment, and since that method itself can be amended, is there any excuse for letting it grow obsolete and ineffective as the only means of legal control which the people may exert? We must cease the practice of circumventing the Constitution, or interpreting it in a manner which tends to destroy it. If our Constitution is to retain its important position in our democracy we must follow the advice of George Washington, quoted in an earlier chapter. It might be well to repeat it here because it contains one of the basic needs which the writer feels is necessary to a successful continuation of our system of democracy. Washington's advice is as follows:

...If in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for, though this in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly over balance in permanent evil any particular or transient benefit which the use can at any time yield. 11

It seems that most of the present tendencies away from democracy may be traced, finally, to failure of the people to assume those responsibilities which are necessary in a democracy. For too long we have persisted in the idea of

11 "Views on Constitutional Powers," Harper's, CLXXXIX (August, 1944), 262.
letting some one else run the government. We have not kept abreast of the growing complexities of our society, or the changes which should have been made in a democratic manner. We must seek to remedy the situation through education of the people, to realize the importance of their position in our form of government, and the necessity of intelligently exercising all the rights and privileges available to them. The people then must demand that their will as expressed through their legal and political controls, be followed by the agents of government. Democracy is not a form of government that can be set up and then neglected. All of the people must work all of the time to make democracy live. It will be successful only to the degree that the people demand, and help to achieve its purposes. Let us hope that there will be no further delay on the part of the people in once again demanding their rightful position in our democratic system. Then we may once again say with pride and in truth that our government is a government of the people.
BIBLIOGRAPHY

Books


**United States Supreme Court Reports.**


**Articles**


"Civil Liberties Endangered," Christian Century, LIX (June 24, 1942), 798.


Commager, H. S., "Our American Heritage: Marshall and the Constitution," Scholastic, XXXIX (December 8, 1941), 11.

"Congress Shall Make No Law," Commonweal, XXXV (December 26, 1941), 235.


Dilliard, J., "Who'll Elect the Next Congress?", Survey Graphic, XXXI (June, 1942), 292-4.


"Government By Pressure," Scholastic, XLI (October 19, 1942), 10.


Hig, S., "Will We Save the American Form of Government?", Saturday Evening Post, CCXVII (September 30, 1944), 17.

"Lobbies and Blocs," Commonweal, XXXVI (October 9, 1942), 579.


Pettengill, S. B., "You Can Have the Kind of Government You Want," Nations Business, XXX (April, 1942), 44.

Robey, H., "Some Facts on Our Federal Bureaucracy," News Week, XX (December 21, 1942), 64.


"Views on Constitutional Powers," An Excerpt from George Washington's Farewell Address, Harpers, CLXXXIX (August, 1944), 262.

Ware, W. L., "Magnitude of Our Responsibility," Vital Speeches, VII (September 1, 1941), 702-4.


Public Documents

Congressional Record, June 21, 1940, p. 13315.


United States Constitution.
Newspapers