



LIBERTY

Founded 1886

A MAGAZINE OF RELIGIOUS FREEDOM

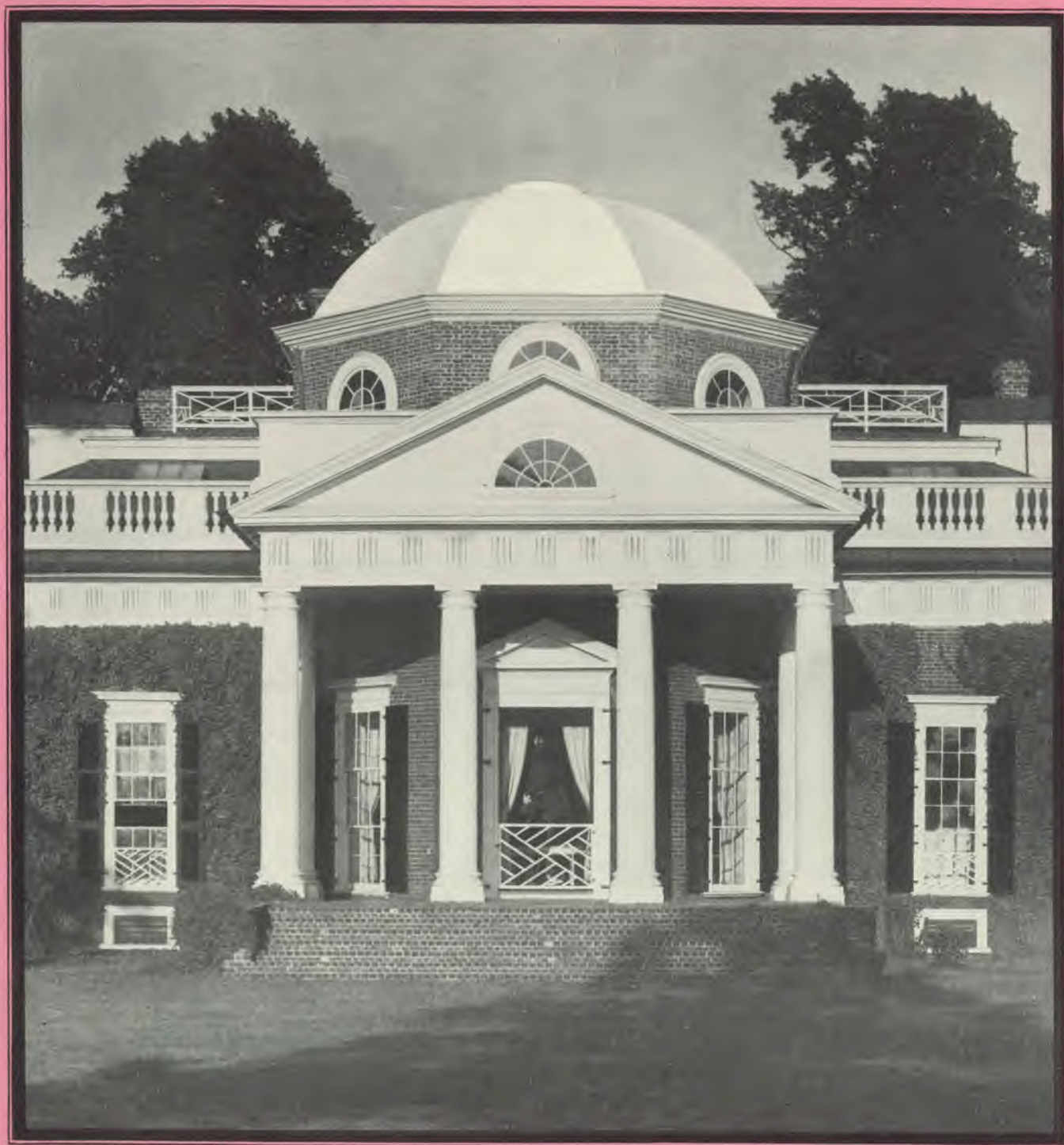


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THE DOME-TOPPED MANSION OF MONTICELLO, HOME OF THOMAS JEFFERSON

**Special Articles by Hon. S. B. Pettengill and Hon. H. W. Sumners
Yick Wo and the Supreme Court**

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WASHINGTON, D.C.

DECLARATION of PRINCIPLES

Religious Liberty Association

1. We believe in God, in the Bible as the word of God, and in the separation of church and state as taught by Jesus Christ.
2. We believe that the ten commandments are the law of God, and that they comprehend man's whole duty to God and man.
3. We believe that the religion of Jesus Christ is founded in the law of love of God, and needs no human power to support or enforce it. Love cannot be forced.
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9. We believe in the inalienable and constitutional right of free speech, free press, peaceable assembly, and petition.
10. We also believe in temperance, and regard the liquor traffic as a curse to society.

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LIBERTY

A MAGAZINE OF RELIGIOUS FREEDOM

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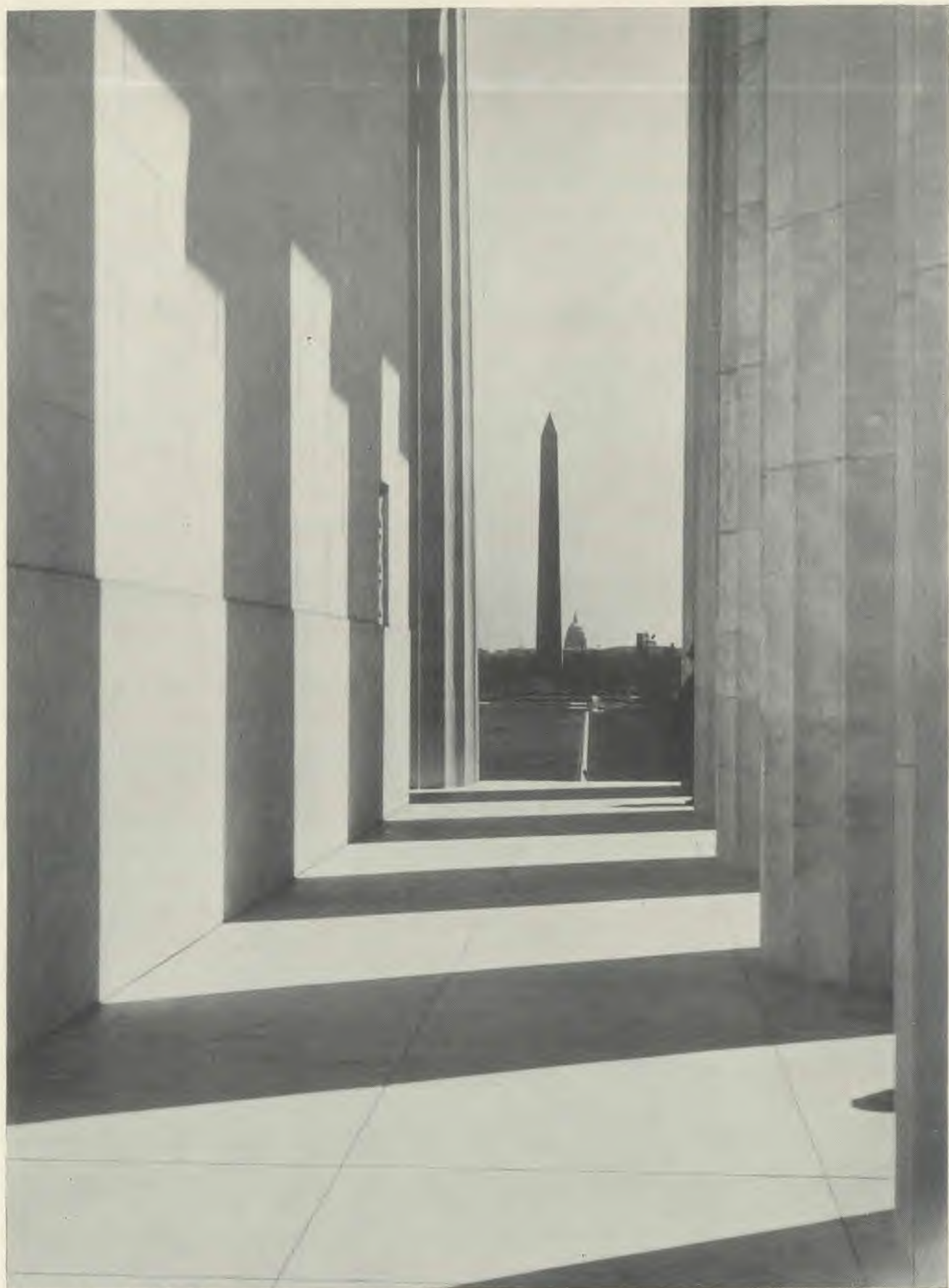


PHOTO BY H. M. LAMBERT

Looking East Toward the Washington Monument and the United States Capitol From the Lincoln Memorial Building

Checks and Balances in the Federal Government

by **HON. SAMUEL B. PETTENGILL**

Member of Congress From Indiana



THE AMERICAN CONSTITUTION is a set of rules designed to help us live happily together. It has no other purpose. Read its noble preamble. Whatever its failings, it was emphatically not "a device for prevention of action," except such "action" as might endanger the rights of the citizens. There ought to be toward these rules, at the very least, an attitude of gallant sportsmanship. That attitude could be described as "constitutional morality." In tennis, baseball, boxing, or any other sport, we call this attitude "playing the game." In the code of sport it becomes a matter of honor. Its breach is met not with an intellectual disapproval alone, but with a moral condemnation.

We put outstanding leaders in the sports world in the hall of fame not only because they were superb athletes, but because they "played the game." And that is something that goes beyond the game itself. The moral value we assign to sports comes perhaps from a tacit recognition that rules are necessary to preserve the game itself, for a game without rules is nothing.

Is such an attitude less necessary in government? in human relations? in building prosperity? in improving our standards of living and maintaining our standards of life? Can we go on without rules and become a happy and prosperous people? Can we cheat the rules and still preserve the confidence by which men plan their futures?

"Constitutional Morality"

These have become questions of great importance today. Unfortunately men have risen, and some have achieved a measure of fame, who have developed a calloused attitude toward what we have called "constitutional morality," a disregard of the rules which we as a people have adopted to regulate our living together.

Such an attitude is a clear reversal of Jefferson. He gave more than lip service to the Constitution. He said he did not regard it as "a mere thing of wax." "With sincere zeal" he sought "an inviolable preservation of our present Constitution according to the true sense in which it was adopted by the States." It is not necessary to question the motives of any who may have departed from the principles of Jefferson, but we need to remember that a good motive is poor compensation for a bad result.

Nothing is clearer than that the founders of the nation intended to keep the three branches of our Federal Government entirely separate from each other. Each was to be free in its sphere, and each was to be a check upon the others. The early executive officials of the United States Government clearly recognized the limitations of their rights and powers. Their scrupulousness in avoiding anything that might subject them to censure is indicated by a letter written in 1792 by Jefferson, then Secretary of State, to President Washington:

"When I embarked in the government, it was with a determination to intermeddle not at all with the Legislature. . . . As I never had the desire to influence the members [of Congress], so neither had I any other means than my friendships, which I value too highly to risk by usurpation on their freedom of judgment, and the conscientious pursuit of their own sense of duty."

The doctrine that officials of any sort possess rights or can demand privileges denied to the people at large, is necessarily predicated on the view that the people in the States are incapable of self-government. Any attempt to control the voting by those who have been raised to power through the suffrage of the people, must lead to grave abuses.

Seventy-five years ago the Force Acts were passed to subject the South to the status of a conquered pro-

vince of the Federal Government. These acts were passed ostensibly to supervise elections, but in fact to control elections and those elected. These Force Acts rightly aroused the opposition of all the citizens of the South, and it is only fair to say that thousands upon thousands in the North felt that they were unjust.

The Legislative Branch of the Government

A number of checks and balances were placed in the hands of the legislative branch of the government. Limitation of space prevents reference to all of them, but a few outstanding ones may be mentioned.

The Senate has the constitutional responsibility to ratify or reject treaties with foreign powers. This was designed by our fathers as a check against the evil consequences of a treaty negotiated by a rash or foolish Chief Executive. Every one can see how important it is that the Senators shall be free from any pressure from any source whatsoever.

To the House of Representatives is given constitutional responsibility of impeaching a President. To the Senate is given the constitutional duty of trying the impeachment. This safeguard was intended to save citizens from tyranny, the usurpation of power by any self-seeking President. Although Presidential impeachment has occurred only once, nevertheless the power is there; and so long as the power remains, it necessarily influences conduct, even though not used.

The power given to the members of these branches of the legislature is futile unless they are free to exercise this power. If they were to owe their nomination and election to the Chief Executive, the case would be similar to a defendant at the bar's naming the jurors to try him.

Under certain circumstances the House of Representatives may elect a President. This is when no candidate for that office receives a majority of the electoral college. In such a case the House of Representatives elects the President, each State delegation voting under the unit rule, and each State having one vote. Thus the votes of twenty-five State units might elect a President. The danger of a repudiated President's continuing in office would be immensely increased if the Congressmen from twenty-five States really owed their elections to the President. Admittedly this danger is remote, but if it ever occurred, it would confront the nation with a very grave crisis.

Power to Confirm Nominations

To the Senate is given the power to confirm or reject nominations of Federal judges, foreign ambassadors, Cabinet officials, etc. Destroy this power, and a President, contemptuous of our Constitution, could fill the courts with puppets equally contemptuous of

the Constitution. A President who hated Catholics, or Jews, or Negroes, or other racial or religious minorities, or who hated labor or private property, or who hated States, could fill the courts with judges who had the same hatreds.

The power to reject nominations, even though seldom exercised, must always be a restraining influence for good in the selection of these important public officials.

To check an unwise or ambitious or impetuous President, our fathers placed in the hands of Congress the sole power to declare war and to appropriate funds for its prosecution, if declared. It is clear that it was intended that this awful responsibility—and it is far more awful now than it was 150 years ago, because war is far more awful—was to be exercised by free men, free from the controlling power and pressure of the Chief Executive. But make Congressmen and Senators the puppets of the President, and this power to save a great nation from the frightful consequences of an unwise and unwanted modern war becomes emasculated. If the people are to be denied the direct power to protect the bodies of their sons, then it must be plain that the people's representatives must have this power. Otherwise the people have no power whatever against the secret pressures of powerful interests which might be concentrated upon the White House or the Secretary of State.

Every separation of power provided by the founders of the nation was intended to prevent the abuse of power. The "checks and balances" of our Constitution had only one purpose,—to protect us and our children (which means you and your children) against the unwise use or the abuse of concentrated power. It was to limit the damage inherent in the abuse of power.

The whole design of our government was intended to preclude any possibility of any branch of the government's destroying men's freedom. To the Chief Executive was given the power of the veto. Hasty, ill-considered legislation might be denied his signature. To the judiciary branch was given what has come to be recognized as the "right of review." The history of the nation shows that in many cases the Supreme Court has through calm review and judicial opinion saved the nation from sacrificing certain inherent rights.

Liberty Rests in the Complete Freedom of the Franchise

The greatest and most important civil right is the right of the citizen to vote his unbought and unfrightened judgment on matters concerning his own government. From this civil right all other rights depend,—freedom of worship, freedom of the press, trial by

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PHOTO BY HORYDCZAK, WASH., D.C.

SAMUEL F. B. MORSE, ARTIST

A View of the United States Senate in 1822. After the Senate Moved to the North Extension of the Capitol, This Room Was Occupied by the United States Supreme Court. Three Years Ago the Supreme Court Moved to a Magnificent Building of Its Own, and This Room Is Not Being Used at Present. It Is a Place of Great Interest to Visitors

The Whence, the What, and the Why of Our Constitution*

by **HON. HATTON W. SUMNERS**

Chairman of the Committee on the Judiciary of the United States House of Representatives

THE FEDERAL CONSTITUTION was submitted without a bill of rights. In this regard it differed from most of the State constitutions. Fifteen months after the ratification by the required number of States and before all the States had ratified, the first ten amendments to the Constitution—the Bill of Rights—were submitted. Eleven years before, on June 12, 1776, Virginia formulated a “Declaration of Rights” that “in all criminal prosecutions a man hath a right to demand the cause and motive of his

accusation, to be confronted with his accusers and witnesses, to have his witnesses and a speedy trial by an impartial jury of twelve men of his vicinage, a unanimous verdict before guilt, not to be compelled to give evidence against himself, nor to be deprived of his liberty except by the law of the land or a judgment of his peers.”

A comparison of the English Bill of Rights, 1689, with the American Bill of Rights will immediately make evident the extent from which both the content and the wording of the latter were taken from the former. For example, the provision “that excessive bail ought not to be required, nor excessive fines im-

* This is the fourth and final article in a consecutive series which Congressman Sumners, the chairman of the Judiciary Committee of the House of Representatives in Congress, has written exclusively for LIBERTY. These valuable and informative articles are well worth preserving for future use.

posed, nor cruel and unusual punishments inflicted," is identical in both instruments with the substitution of "shall not" in the American bill for the "ought not" of the English bill.

Nothing New in Constitution

It may be stated as a fact to which there is no substantial exception that not a single new or untried principle was incorporated in our Federal Constitution. When the Constitutional Convention met, the form of our government had already become fixed. Important changes were suggested by individual members, and not a few members sought for new material to incorporate, but they either returned empty-handed from the quest or that which they brought back was rejected. Hamilton seemed to want a king, and even Madison insisted that the Federal Congress should exercise the veto power over all the acts of the legislatures of the several States. If he had been successful, not a single act of any State legislature would have become effective until the Federal Congress had approved. The conflicts between the larger and the smaller States, between the Northern and Southern States, between those who had lost faith in the people and those who had not, the fact that it was known that the people would not ratify a document if novel features were incorporated, created a condition under which, as a rule, a majority could be brought to accept only that which already had existed. As a result the Convention embodied in the Constitution that which had originated out of necessity, which had been tried, and which the people and their ancestors had become accustomed to during the long period from the day when Tacitus looked in on our Constitution functioning among the Germanic tribes at the time when Nero was ruling in Rome and only sixty-eight years had passed since Christ had been born in Bethlehem.

Wherein the Founding Fathers Were Great

This is not to the discredit of the patriotic men who met in the Federal Convention. It is to their credit. As men are measured, there were great men who sat in that Convention. They did their work as well as men could do, perhaps. We owe to them a debt of lasting gratitude. But we do them no discredit when we recognize the fact that the excellency of our Constitution is owing as much to the limitations under which they operated as to the ability which they possessed. Nature has withheld from human beings the ability to write in a creative sense the Constitution of a living government. The Fathers did not try to do it. The time is at hand when it is of the greatest practical importance that we recognize that fact. Many times that has been tried, however. Many peoples have borrowed our Constitution, the written document, but they have never

been able to operate a government under it for the very clear reason that in their respective governments it was only a document; it was not rooted in the governmental concepts of their people. It had not grown up from that source. They had not developed a governmental ability in harmony with our Constitution, able to sustain and make it vital.

These are the substantial facts of the origin and development of our Federal Constitution as distinguished from the mythological tales told to us by holiday orators which, unfortunately, much to our hurt, have been popularly accepted by our citizens in lieu of the facts. I hope you will pursue this examination. There is nothing more interesting to one who makes the examination, not as a politician, but as a scientist would, of the origin, development, and functioning of the Constitution, especially of popular governments.

Fact Versus Fiction

For instance, you will discover that during the formative period, the growing together of the peoples and territories with points of physical and governmental contacts into a nation, there seemed to develop the government mythology we have been discussing. It seems to be an agency of nature. The people built a sort of national shrine around the magnified virtues and achievements of those in whom they had a common interest. This seemed to be a sort of natural instinct, somewhat similar to the impulses of parents with reference to their children. This mythology with us unquestionably had a tendency to hold the people together until they could grow together and become a nation. During the formative period of our national government, there was not only a lack of internal strength, a lack of union, but a great pressure from the inside outward. This is true of any national government in which different territorial units are brought together into one governmental organization. During that period nature seemed to draw strength to the point of weakness from almost any source available, as it does when the parts of a broken bone are being united, as it does when the parts of plants are being grafted into each other.

That was a period of concentration of governmental power, naturally and properly, and, apparently, necessarily so. Written documents, compacts, written constitutions, agreed to among peoples of different units brought together in a new governmental arrangement, are helpful to hold together until they can grow together, but written documents, although formulated and ratified by those concerned, can never hold within themselves the element of cohesive strength. Not the compacts of ancestors, but the consent of the living, of necessity constitutes the strength of union.

It is true that during that first period, before the



PHOTO BY HORYDCZAK, WASH., D.C.

Statuary Hall in the United States Capitol. Since This View Was Taken, Some of the Statuary Has Been Removed to Other Positions. The House of Representatives Used This Hall From 1808 Until 1814, and Then From 1817 to the End of 1857. In This Hall Ex-President John Quincy Adams, Then a Representative From Massachusetts, Was Prostrated at His Desk, February 21, 1848, by Paralysis, Which Resulted in His Death Two Days Later

fibers of union had united the States, the Constitution was of service in helping to hold the States together. It acted as does the tape of the horticulturist, binding parts of different plants together. If they be of a kindred nature, and properly adjusted, they will grow together; but just as the tape does not unite, but only holds the parts together in proper adjustment to give nature a chance, so our Federal Constitution, the ratified document which had come from the Federal Convention, held the several States during the formative period of our government.

In 1811, Mr. Quincy, of Massachusetts, expressed in Congress what must have been at that time the prevailing sentiment, when he said in substance, "Sir, I confess it, the attachment which I have for this Union is due to my love for the commonwealth of Massachusetts. There is my fireside, and there the graves of my ancestors." During that period, time after time the names of Virginia, Massachusetts, Pennsylvania, and the other States were mentioned as being first in the patriotic love of the people.

FOURTH QUARTER

Weaknesses Manifested

The admission of Louisiana, the War of 1812, and the admission of Texas produced crises which revealed that the States had not yet fully united.

In 1843, during the consideration of the admission of Texas, John Quincy Adams, joined by twelve other members of the House of Representatives, all from the North, issued an address in which he said: "We hesitate not to say that annexation [of Texas] effected by any act or proceeding of the Federal Government or any of its departments would be identical with dissolution, . . . not only inevitably result in dissolution of the Union, but fully to justify it, and we do not only assert that the people of the free States ought not to submit to this, but we say with confidence they would not submit to it."

It is an interesting and illuminating fact, and would be amusing but for its close association with our great tragedy, that Mr. Adams' expulsion from the House was moved by Mr. Wise, of Virginia, who was very indignant and outraged on the ground

(Continued on page 26)

The Crisis of Freedom

by ROBERT LEO ODOM

[The writer of this illuminating article concerning conditions in some European countries, has lived and traveled in those countries and has firsthand information. While in charge of the interests of religious minorities, he has personally experienced many of the difficulties herein related.—EDITOR.]

HUMANITY HAS COME to another turning point in history. Modern statesmen and philosophers have repeatedly called our attention to the fact that civilization is rapidly changing its course. Indeed, we are already rounding the curve toward a new horizon in the history of freedom.

The changes of the present day are precipitous, characterized by unparalleled suddenness, although trends in this direction have been noted for more than half a century. We live in a fast age. Current happenings are startling, and their repercussions are of universal concern. The forces at work in the world today are sure to bring about results of great importance in rapid succession, and it is difficult to see how America can avoid eventually becoming involved in this great struggle of the ages.

Mr. Anthony Eden, the distinguished British statesman, in an address before the Royal Society of St. George, in London, April 26, 1938, made this significant declaration: "The issue of freedom, the most fundamental of all in our civilization, once more is squarely raised by what is happening in the world, and it cannot be evaded."

He said also: "We are living in one of those great periods of history which are awe-inspiring in their responsibilities and consequences. Stupendous forces are loose—hurricane forces."

On the occasion of Universal Bible Sunday, our Secretary of State, Honorable Cordell Hull, told the American people: "We are living at a time when the minds and hearts of men are baffled and confused. Ours is an age of unparalleled paradoxes. In many parts of the world there is a drift toward a reversion to a system of tyranny of man over man; toward an abridgment or destruction of human liberty; toward a shackling of speech and action, and even of individual thought and conscience."

In this critical period, civil and religious liberty is facing its most crucial test of modern history. Undoubtedly America is where the last stand for freedom will be fought, since it is fast disappearing from other countries. In order to appreciate fully our unique place in freedom's history, we need to recall a few outstanding facts.

Our Heritage of Liberty

The fathers of our Republic were not mere theorists and political tinkers who were attempting to invent a means whereby their names might be perpetuated among future generations. They were statesmen of profound and sane convictions, men whose resolutions were burned into their innermost being by their past experience. They and their forebears had suffered centuries of oppression and abuse in the name of religion and government. The ecclesiastico-political system of the Old World during the Middle Ages had tended to enslave the body and mind of humanity, and this galling experience was creating more and more determination to have civil and religious liberty. Even in the colonial days the spirit of persecution and intolerance was rife; and the soil of America has been stained with the blood of Freedom's martyrs.

Therefore, it was out of a deep sense of justice and right, bred into them by generations of tyranny and abuse, that the fathers of our country finally declared: "We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."—*Declaration of Independence*.

In so few words we find the very essence of the philosophy and principles upon which the American commonwealth has been built and directed. Its spirit is not an impious and atheistic one such as guided the French Revolution, but it is an acknowledgment of the existence of the Creator and of certain inalienable rights which He has given to men, rights which it is the duty of civil government to preserve. In the above declaration were enunciated the great fundamental principles of true religion and real democracy as the foundation of the new nation taking its place upon earth.

Next followed the adoption of our Constitution. The fathers of our Republic were not concerned about merely the political machinery of the new state. Greater interests were at stake, and they were determined to make sure the civil and religious liberty of their posterity. Consequently the adoption of the first ten amendments, popularly known as the Bill of Rights, was made imperative in order to bring about

the acceptance of the Constitution proper by the various States.

The very first of those constitutional amendments reads: "Congress shall make no law respecting an 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."

When the Constitution of the United States was adopted and our freedom became a reality, there began to be manifest immediately in all the world a greater degree of civil and religious liberty. It grew all through the years.

Change in the Course of Freedom

Indeed, the last one hundred fifty years have been, perhaps, the brightest era of civil and religious liberty that the human race has ever enjoyed. There has been in recent times a sudden change in the course of freedom. Dictators and totalitarian governments are in vogue. Ecclesiastical interference in national and international policies is increasing. Great religious organizations and groups are marshaling their forces in an effort to control the destinies of civilization.

Democracy is being rapidly supplanted by ancient absolutism in a new guise. The frequent assertions that dictators are directed by Providence, and that their doings are the will of God, smack strongly of the old doctrine of divine right of kings. The people, either by force or by persuasion, are yielding to a single man the prerogatives they once asserted to be exclusively their own. Individual freedom is being swallowed up in the urge for social and economic salvation through mass standardization by centralized government. The private citizen is no longer looked upon as possessing any inalienable, God-given rights, but is rather regarded as a cog, belonging mind and body to the great social machine that is to move at the will of the master mind or minds controlling it.

As Americans we too often think of the European situation as sheer foolishness, when it is we, in reality, who manifest the height of folly. We are spectators beholding one of the most thrilling and momentous dramas of human history. The very fundamental principles of civil and religious freedom are involved in the acts now being played in the European struggle. Yet we do not feel concerned about it.

There are few countries of Europe today where freedom of the press, of the platform, of the pulpit, and of the radio is known. I do not speak of license to preach violence and murder. I refer to those matters which we Americans are wont to discuss and debate as pertaining to our civic, religious, educational, commercial, and social life. Censorship not

only suppresses the truth when it is unfavorable to the regime in power, quashing all adverse criticism and opinion, but in some cases the matter published is distorted, deformed, exaggerated, distended, mutilated, or minimized until it is only half-truth. In some instances preposterous falsehood and lying is propagated and encouraged.

In one land, religion may be hounded and persecuted on every turn by intolerant, rabid atheism. In other countries where ecclesiastical politics overshadow the state, religious minorities and unbelievers are subjected to outrageous vexation. I know of places where large numbers of pious and upright citizens are denied the right to assemble peaceably and worship God in song and prayer and the study of His holy word, because their mind and conscience do not agree with all the tenets of the state church. I have met in secret worship and held the communion service in places where discovery would have made us subject to the severest penalties.

Curbing Religious Activities

A minister of state in some countries is charged with looking after the religious activities of the nation, and he may exercise a very rigorous control over religious publications, so as to suppress everything not agreeable to the church party he represents. And even where the letter of the law grants religious tolerance, dissenters from the state cult are greatly



ILLUS. LOND. NEWS

PHOTO BY FAYER

Captain Anthony Eden of Great Britain



PHOTO BY HARRIS & EWING

Secretary of State the Honorable Cordell Hull

vexed by measures which virtually nullify the freedom conceded in the constitution.

Popular campaigns against communism, anarchy, and atheism in Europe often conceal persecution against religious minorities directed by a powerful religious organization whose tentacles reach out into many lands. The word "red" is frequently made to include people and things which have not the slightest connection with Marxism. The persecution of the Jews is increasing. Other religious minorities are also feeling the bite, but get less publicity. Christian pastors, colporteurs, and laymen frequently are arrested, beaten terribly, and thrust into dungeons, because some bigoted clergyman of the state cult brands them as "reds."

Recently I lived where every notable feast day of the favored cult was proclaimed a national holiday, with cessation of public and private business. The citizens were obliged to decorate their balconies with flags, public officials and sections of the army were required to participate in pompous and imposing religious ceremonies, and the police force was marched en masse to religious services. Some of the men I knew were unbelievers, but they had no choice.

Recruits for the army, called for obligatory military service, were made to kneel in worship and then

rise and swear to shed their last drop of blood in defense of a regime of church and state. The poor boys had only one other alternative—the firing squad and the stigma of treason.

These things were carried so far that state religion was made obligatory on all pupils in public schools and state universities. No one might teach unless he had both a recommendation from the local religious leader and a certificate showing that he had taken the prescribed course of religious instruction. No regard or exemption was given to unbelievers and dissenters. The rector of a university was executed by a firing squad, and it was published everywhere by the censored press for that region (but not to be news for the outside world) that the professor was charged with "objecting to making religious instruction an assignment in the public schools."

I know of congregations who have suffered all sorts of vexation and denial of sacred rights, because they were dubbed as heretics. A decree of one governor ordered all heretical books to be burned. In my city a representative of the state church was designated a censor of books, and the libraries and bookstores were visited by armed groups of political militia, who seized tons of literature and burned it in heaps before the public. We were startled by one decree saying that only those of the favored church might bury their dead with religious rites.

Much more could be recited. These things, thank God, have not yet come to America, and every patriot hopes they never will. But even here there are organizations, some antireligious and others ecclesiastical, that are laboring to destroy freedom of the press, freedom of speech, and most of the fundamental liberties we enjoy. Lobbyists are constantly knocking at the doors of Congress for national Sunday laws to suppress the competition that popular religion is facing. State legislatures are asked to introduce religious instruction into public schools, to dedicate public-school funds to private ecclesiastical schools and seminaries. Fortunately our leaders in most instances have been able to see the subtle and often-disguised dangers hidden in some of the innocent-looking measures proposed to them.

Times change and new conditions arise, but the basic principles of justice are eternally the same. It behooves us to solve new problems and difficulties in harmony with those immutable principles. If the so-called reformers of America could live for a time under some of the distressing conditions of Europe, they would think our country a good place after all.

The Statue of Liberty faces the east today, holding high the torch of liberty. It is more than significant, for here in America is found the last and brightest light of freedom. When that torch goes out in the United States, mankind is doomed.

Is the Suicide of Civilization at Hand?

by **HON. GEORGE A. WILLIAMS**

ONE MAY WELL ASK this question as he views the decay and disintegration of the fundamentals of popular government and of society. In the major nations of the world today, subtle forces of evil are swiftly gaining the ascendancy and with impunity are sweeping aside the bulwarks of human liberty and human rights to establish in their stead the rule of the dictator. Until recent years, we in America might have viewed the rapidly changing conditions in the world with complacency; but we can do so no longer.

To borrow the words of one prominent statesman: "These are serious times. Liberty is crumbling in more than two thirds of the world. In less than a score of years the courts in a dozen nations have been made subjective to political power, and with this subjection the people's securities in those countries have gone out the window. And mark you this, in every instance the persuaders have professed to be acting for the people and in the name of progress. As we watch the parade of nations down the suicide road, every American has cause to be anxious for our Republic."

The Honorable James A. Reed, former United States Senator from Missouri, said in an address some time ago: "We have made more progress in less time toward socialism and communism than did the nations across the seas." A strong statement, but who can disprove it? These are indeed serious times, when men's minds are troubled and thinking is confused. And it is to the credit of the citizenship of our country that in the heat of discussion of great

and burning issues, the controversy has risen far above political partisanship. It has quickly become a question of Americanism, of loyalty to those principles upon which the nation was founded, of a devotion to those eternal verities, the fruits of which have made this nation the sanctuary for the oppressed of all lands.

And that is the plane upon which the problem should be considered. In the last analysis the whole controversy raging around the Constitution and the Supreme Court resolves itself into this—Shall we repudiate the fundamentals of Americanism and substitute in their stead the isms of the dictator nations of the Old World? Shall we exchange human rights and human liberty, which are without controversy divine in their nature, for any of the new political doctrines, which in principle and in their operation are a concrete denial of every divine right to which man is heir? The fruits of these isms have been the destruction of liberty and the downfall of nations since the days of antiquity. And we in our day are witnessing a repetition of their baleful work. These isms are hoary with age. There is nothing new about them save the brilliant and scintillating plethora of words with which they are presented.

Quoting United States Senator William E. Borah in a recent article in a popular magazine: "Both communism and fascism would rob them [men and women] of every right, every privilege, every guaranty given them in the Constitution—personal liberty, and all the attributes of liberty. The first line



Illustrating the Destructive Influences in Civilization

A Mural Painting by Elibu Vedder in the Library of Congress

of defense, then, is the Constitution of the United States." These isms would destroy that which America has been building since the founding of the Republic. The sacred rights of human liberty cannot dwell in their midst. Under a dictatorial government there are found no human rights,—no civil liberty, no religious liberty, no freedom of speech or of press, no property rights. The things we hold dear, the things we consider sacred, the rights and privileges guaranteed to us in the Constitution, find no place in their scheme of things.

Subtle Forces Still at Work

And let no one be deceived by outward appearances. Because there is an apparent lull in the attack on the Supreme Court and the Constitution, we have no evidence that the struggle is ended. Far from it. The forces behind the movement to make America over are neither defeated nor discouraged. Let the fact be kept continually before the American people that there were more than a score of resolutions and bills pending in the last Congress which aimed to deprive the Supreme Court of the right to pass on the constitutionality of the acts of Congress. There were more than 150 resolutions and bills pending which aimed to alter the Constitution fundamentally. There was one resolution to amend the Constitution that, had it been adopted, would have completely nullified the individual's right of appeal to the Supreme Court.

Who are the authors of all these threatening measures, and what is the real motive and purpose behind them? These are legitimate questions, fair questions, and there can be but one answer. It is well known that many of these bills were introduced by request, and that the member of Congress whose name the bill bears has not read the bill and is unacquainted with its evil character. But the fact is clear that the bills

were drawn by the enemies of popular government, by men who are not friendly to the constitutional guaranties, nor to the Supreme Court, which stands guard over the constitutional guaranties. And behind all this there are forces at work in our land supporting a movement that is world-wide, having as its ultimate objectives the destruction of free government and the substitution of principles subversive of human rights and liberty.

"Eternal vigilance is the price of liberty." Never were these words more true than they are today. And never was there a time when there was greater need to give heed to these words. Civilization as we know it today is in danger, not alone from the enemies of popular government, but more so from the indifference of its friends. God forbid that I should call names or speak with bitterness of those termed the enemies of our form of government. It may be they are honest in their convictions and think their destructive course is the best way to cure the untoward conditions that exist. If so, it is theirs to exercise their constitutional right of free-and-honest expression of their convictions, as it is also the privilege of the supporters of popular government to give expression to their convictions.

Let the friends of human liberty rally to the support of the American system of government and to the defense of those fundamentals of human liberty incorporated in the Constitution of the United States. As there flamed across the nation a few months ago a militant opposition to certain proposed legislation deemed inimical to popular government, so let there be heard again an earnest and united protest against every bill and every resolution, yes, and every action of any kind, calculated to weaken or destroy the fundamentals of this Republic. And let this be the watchword for every champion of human liberty—Hands off the Constitution and the Supreme Court!



ELIHU VEDDER, ARTIST

This Picture Vividly Portrays Human Despair. A World in Which the Rights of Man Are Trampled Underfoot Will Surely Come to Ruin

Dangers Threatening the American Principle of Government

by JOHN FRANKLIN BLUNT

AMERICA has come to the parting of the ways. For 150 years the nation has prospered from the wise provisions embodied in the fundamental law of the land. Civil and religious liberty has been enjoyed, not only as a gift imparted by God, but as the express guaranty of the national Constitution, to which the Federal courts and the tribunals of the respective States have been constrained to conform. Congress has been besieged with numerous propositions, offered for enactment into law, the adoption of which would completely change the character of government and threaten the loss of liberty, which has been the universal heritage of citizens of this country, and in the enjoyment of which aliens coming to our shores have been accorded equal rights. Shall this last safety zone be blotted out?

Freedom of speech and freedom of the press have been assailed, though expressly guaranteed by the First Amendment to the national Constitution. Earnest effort has been put forth to curtail the expression of opinion regarding public affairs. Men in nowise superior to their fellows have been advanced to positions of public trust and political authority, in cases in which they have undertaken to limit the prerogatives of those by whose favor they themselves have been elevated to office. There has been an endeavor to abridge or to annul rights fundamental to American citizenship, and to expand the powers of the executive.

Dangerous Trends

Persistent attempts are also being made to deprive the United States Supreme Court of its power to pass upon the constitutionality of acts of Congress. It is sought to place the determinations of Congress—like the laws of the Medes and the Persians, which could not be annulled—above repeal, and to make binding upon the nation the hasty legislation that may be effected without regard for possible conflict with other enactments. In short, there has been an attempt to increase the power of certain branches of the government beyond what is intended by the Constitution. This is a dangerous trend.

The United States, from its establishment as a nation, has commanded the respect of foreign powers. By avoiding foreign entanglements and by cultivating friendly relations with the entire world, America has

escaped much of the anxiety and loss that have come to other lands. The statesmen of former days knew full well that our intentions, however honorably conceived, might be misconstrued, or purposely misinterpreted, by foreign cabinets intent upon their own advantage and little concerned as to the methods whereby it might be attained. In our wholly unselfish policies, it came generally to be understood that America was unreservedly committed to the furtherance of justice and to the support of a fair deal in all governmental relations.

The wisest statesmen in the world see the approach of a mighty conflict. They say such a war as they see coming must result in the destruction of civilization. Students of prophecy, with clearer vision, declare that the stupendous conflict now approaching must culminate in the destruction of the world! America will be in it most assuredly, but it would be a misfortune that cannot be overestimated, if, owing to the centralization of governmental authority, a legalized dictatorship should be consummated, under which free speech would be impossible, the freedom of the press would be destroyed, and civil and religious liberty would become a thing of the past. Such usurpation of the rights of American citizenship would hasten the coming desolation.

It is a time for those who love and pity their fellow men to hold fast to the constitutional guaranties that now exist, and not to allow the sacrifice of our common heritage, which in the providence of God stands as a barrier to the oncoming flood of universal warfare. The three coordinate branches of national administration must be preserved, if America is to demonstrate that the principles which actuated the founders of this Republic are still held in high respect.

George Washington was right when, upon his retirement to private life, he warned the people of this country against allowing either branch of the public service to assume a preponderating influence over the others. Each, in its respective sphere, must be kept free in the exercise of its legitimate functions, if the rights of citizenship are to be maintained. Therein lies the great difference between a true democracy and the servitude of a totalitarian state. In a true republic, such as America has been, every individual

(Continued on page 27)

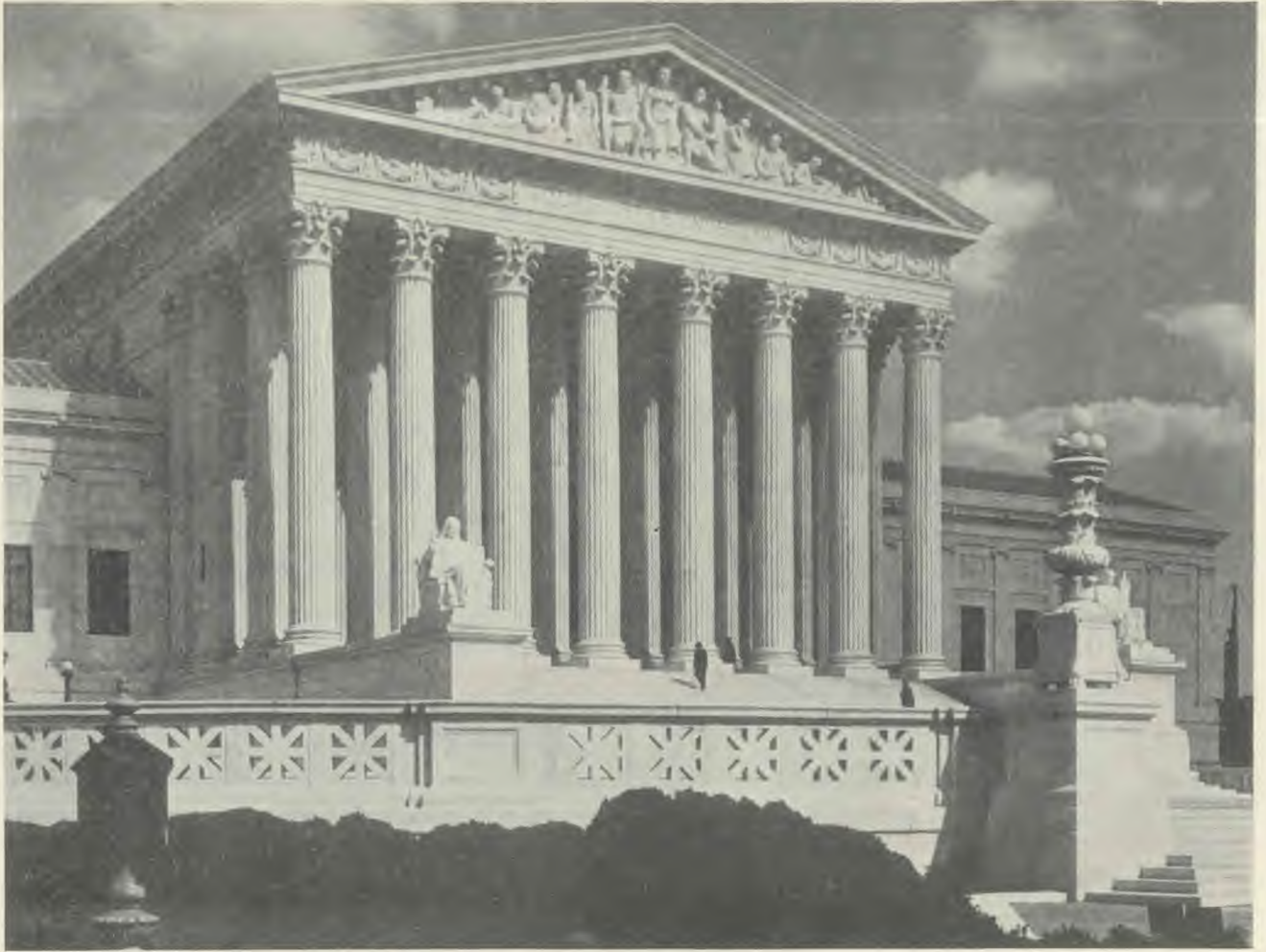


PHOTO BY S. M. HARLAN

This Imposing Building Houses the Highest Court of the Judicial Department of Our Government

Constitutional Guaranties

The Story of Yick Wo and the Supreme Court

by **MELVIN M. BELLI**

*Attorney at Law, and Writer of the Syndicated
Column, "So That's the Law"*

YICK WO, with skin the color of the metal that men sought in California in the early days, was a Chinese laundryman who came to this country to seek a livelihood.

In 1886 there were three hundred twenty laundries in San Francisco; two hundred forty of them were Chinese. All the Chinese laundries operated in little frame buildings. Little Yick Wo worked hard and faithfully.

Business boomed until the San Francisco board of supervisors enacted an ordinance prohibiting the operation of laundries in frame buildings, without a special permit from the city.

As the city fathers granted permits only to white men, the purpose of the ordinance was obvious. Yick Wo was among the hundred fifty Chinese arrested for operating without a permit.

Now, before leaving his homeland, he had read

about an America where "all men were created free and equal." If this was so, reasoned Yick, why should the mere fact that God had given him a yellow skin prevent him from earning a living in America?

Up the judicial ladder Yick started to climb, armed with a writ of habeas corpus. Each California court said, "Denied!"

But Yick Wo had also read that there was a United States Constitution; that it guaranteed every one the "equal protection of the laws;" that this Constitution was the supreme law of the land for each of the States. He also knew that the Supreme Court had the final interpretation of that Constitution.

The Supreme Court sat in Washington. That was a long journey from San Francisco in those days. Furthermore, if he did get there, would they consider such an insignificant case as that of a poor Chinese laundryman? His competitors, he knew, were rich and politically powerful.

Yick Wo made the decision, and finally arrived in Washington.

Not only did the Supreme Court consent to hear his case, but it reversed the decision of every California court, and held that the ordinance of the San Francisco board of supervisors was unconstitutional!

Said the Court: "The very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself." [118 U.S. 356.]

Yick Wo had won his case.

But was Yick Wo's problem unusual? Not at all!

The Case of Milligan

In 1864, Milligan, a colored man, was tried for treason before a court martial. Death was the sentence. President Lincoln approved it.

Milligan sent a writ of habeas corpus to the Supreme Court of the United States on the grounds that he had been arrested and tried in the State of Indiana; that the civil courts were open there; that under the Constitution for the black man as well as for the white, he was entitled to a trial on the merits before a jury, and not before a military tribunal.

Just before this case had been decided, President Lincoln had appointed a Republican, Dave Davis, his bosom friend, to the Supreme Court. Court observers declared Davis would "vote with his President." But Davis wrote the opinion granting the writ of habeas corpus.

Verbal attacks upon the justice were even more vicious than certain present-day criticisms of the Court.

Said the *National Intelligencer*: "The hearts of traitors will be glad by the announcement that trea-

son, vanquished upon the battlefield and hunted from every other retreat, has at last found a secure shelter in the bosom of the Supreme Court."

But look, for a moment, at the language which Davis used in giving his opinion; then, in the more sober light of history, consider who was right: the Court, or those who spoke with the partiality and hatred of Civil War times?

"By the protection of the law human rights are secured; withdraw that protection, and they are at the mercy of wicked rulers, or the clamor of an excited people. . . . The founders of our government were familiar with the history of that struggle [to preserve liberty], and secured in a written Constitution every right which the people had wrested from power during a contest of ages.

"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. . . . The government within the Constitution has all the powers granted to it, which are necessary to preserve its existence; as has been happily proved by the result of the great effort to throw off its just authority." [Ex parte Milligan, 4 Wall. 2.]

Milligan, too, won his right to a hearing.

Independent Supreme Court Needed

There are a number of foreign countries that have as their supreme instruments of government, constitutions which in "guaranties" are as profuse, in ideals as noble, and in language as flowery as the American. One such nation recently granted, or "voted" for (whichever you prefer), a constitution "guaranteeing" all the freedoms, from freedom of speech and of assemblage to freedom of religion, that the American Constitution guarantees. Yet the average citizen of certain totalitarian states, despite the fine-sounding constitutions of their countries, actually enjoys none of the rights "guaranteed" to him.

Why? The "guaranties" are expressly set forth in the constitutions.

Just one thing is lacking; there is no independent Supreme Court to stand between the government and the citizen, to declare void legislative and executive acts that abrogate these rights.

Yet, strangely enough, that which vouchsafes to every man his rights, namely, the prerogative of the Supreme Court to hold acts of Congress and of the President unconstitutional, is claimed to be a usurped power.

There may not be language in the Constitution that specifically states, "The Supreme Court may declare acts of Congress and the President unconstitutional." Some profess to find it; others cannot.

However, colonial judges had held acts of colonial assemblies unconstitutional. English judges had held legislative and executive acts unconstitutional, or against "natural law." When the sovereign Elizabeth had created a playing-card monopoly for one of her favorites, the judges held it "unconstitutional."

The Constitutional fathers were familiar with the doctrine of judicial review, the right to hold legislative and executive acts unconstitutional; the courts of their times were doing it. The fathers did not, by any language in the Constitution, curb this power. They did not by any express language set forth the power, because it would be an insult to the intelligence of the judges to set forth a judicial power so generally established. [Marbury vs. Madison, 1 Cranch 137.]

To provide, in the Constitution, for justices and a Supreme Court, was sufficient to provide them with ordinary established judicial powers. "Judicial review" was one.

Thomas Jefferson had said, "The judges would consider any law as void which was contrary to the Constitution."

Since the great decision of John Marshall in Marbury vs. Madison (1803), the Supreme Court has held certain legislative and executive acts unconstitutional, and thereby has secured the rights of every citizen.

"It Can't Happen Here"

Some may say, "But America isn't like despotic countries. We enjoy our guaranties naturally; what happens elsewhere cannot happen here. Legislative and executive officers in this country take the same oath to support the Constitution as do the justices. 'It can't happen here.'" Perhaps not! Yet at least three times Congress has passed bills of attainder, although such bills are expressly prohibited by the Constitution. At least ten times since the Civil War Congress has sought to violate rights of the citizen guaranteed by the Constitution. State legislatures have repeatedly passed laws destroying Constitutional guaranties.

In the recent case of DeJong vs. Oregon, an avowed communist had been sentenced to the State prison. It was the United States Supreme Court that reversed his conviction, because his "right to participate in a peaceable assembly had been infringed" by the State of Oregon.

Communist Herndon appealed to the Court from a conviction by the State of Georgia. Another member of the communist party, he had confessedly written, among other such patriotic(?) efforts, "Banish the gods from the skies and the capitalists from the earth, and make the world safe for industrial revolution."

"Judicial knowledge" may be taken that none of the nine justices subscribed to his political doctrines,

yet "defending with their life his right to say it," they reversed Herndon's conviction. The act of Georgia had violated an American's right to freedom of speech and assembly!

Where else in the world are the rights of man thus recognized? In what other court, besides the United States Supreme Court, are such decisions possible today? In one land the judicial precept for free speakers is "liquidation."

When the legislature of Louisiana, at the bidding of the late Huey Long, passed a law that would have put out of business all the newspapers of the State that opposed him, it was the Supreme Court of the United States [Grosjean vs. American Press Co., 297 U.S. 233], that declared the law unconstitutional.

The "Scottsboro boys" probably never read the Constitution; yet it was the same Supreme Court that gave justice to Yick Wo that saved their lives. The Court said every American citizen charged with a capital offense has the right to be represented by diligent counsel. "During perhaps the most critical period of the proceedings against these defendants, that is to say, from the time of their arraignment until the beginning of their trial, when consultation, thoroughgoing investigation, and preparation were vitally important, the defendants did not have the aid of counsel in any real sense. . . . The prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result a defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense. To do that is not to proceed promptly in the calm spirit of regulated justice but to go forward with the haste of the mob. . . . We are of opinion that, under the circumstances, . . . the necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of counsel was likewise a denial of due process within the meaning of the Fourteenth Amendment." [Powell vs. Ala., 287 U.S. 45.]

Protecting Minorities

In Meyer vs. Nebraska, the Court held unconstitutional a State statute, passed in 1919 in a period of postwar hysteria, that made it a crime to teach any subject to any one in a language other than English. The rights of the individual and the limitations imposed upon the State by the Constitution were set forth in these words of the Supreme Court: "That the State may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally, and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages as well

as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means.” [262 U.S. 390.]

Labor, of all minorities, has probably been the most severe in criticism of the Supreme Court and of the right of supreme judicial review.

Yet in the American Foundries case, the broad decision handed down by Justice Taft held that even though the men that were engaged in picketing were never employed by the company in which the strike was called, that was a right which could not be interfered with by the injunction of the Federal court. From that day, labor marched to a new front.

Charles Warren, former assistant attorney general under President Wilson, showed that labor had been upheld in the ratio of ten to one in the Supreme Court. He said, “Labor should, therefore, direct its efforts toward Congress rather than toward the Court, for whenever labor can persuade Congress that these decisions were wrong, labor has it in its own control to change them.”

Once, in Oregon, a statute initiated by the majority of voters and aimed at the Catholics, compelled parents to send their children, between the ages of eight and sixteen years, to public schools. “Unconstitutional; it interferes with the liberty of the parent to

control, within reasonable limits, the education of his offspring,” said the Supreme Court. “But there is involved . . . the rights of the parents and guardians who desire to send their children to such schools [parochial], and the rights of the children themselves. Reflection should soon convince the court that those rights, which the statute seriously abridges and impairs, are of the very essence of personal liberty and freedom. . . . It is not seriously debatable that the parental right to guide one’s child intellectually and religiously is a most substantial part of the liberty and freedom of the parent.” [Pierce vs. Society of Sisters, 268 U.S. 510.] Would such a decision be possible in any totalitarian state?

It was the same Supreme Court that said, in holding unconstitutional a West Virginia statute denying jury duty to Negroes, “The law in the State shall be the same for the black as for the white.”

President Wilson said the world was being made safe for democracies. It is now in order to say that the Supreme Court has made America safe for minorities, though they be the loudest in criticism of the Court.

Only when there are no more minorities, when Congress and every State legislature obey Constitutional “guaranties,” will the American citizen have no further need for a Supreme Court that puts into practice a Constitution that “guarantees” protection to every one under its jurisdiction.

New York State Constitutional Convention Harassed by Religious Controversies Over State Aid

by the **EDITOR**

THE STATE CONSTITUTIONAL CONVENTION of New York State has been harassed with numerous proposals from Catholic sources to have provisions written into the State constitution to grant State aid to parochial-school children from the tax funds of the State. Mr. Steingut, a delegate, submitted the proposal that “all the children of this State without regard to race, creed, color, or the school they attend, shall have equal rights to all health and welfare services, transportation, and secular textbooks provided with public funds. The State, or a subdivision thereof, providing any such services and benefits shall extend them equally to all children. Nothing in this constitution shall prevent the carrying out of the provisions of this section by the State or any subdivision thereof.”

FOURTH QUARTER

Section 4 of Article IX of the Constitution reads: “Neither the State nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught.” Mr. Dowling, another delegate, proposed to amend the above section as follows: “The provisions of this section shall not be construed to prevent the State from giving public monies as State aid to cities and other political subdivisions for education on the basis of children in attendance in private and/or denominational schools.”



PHOTO BY L. H. KING

The New York State Capitol at Albany Where the State Constitutional Convention Held Its Sessions

The Court of Appeals of New York recently decided that the legislature had exceeded its authority in enacting a law which provided free transportation for parochial-school children; hence the attempt of certain Catholic leaders to write such a provision into the State constitution, so that it may become constitutional.

Another proposal submitted is an amendment to allow "religious instruction, under the direction of a duly constituted religious body, for pupils in the free common schools by instructors of the same religious faith as the pupils instructed."

The New York State Teachers' Association sent a bulletin to all public-school superintendents, principals, teachers, and others, saying: "It is necessary to offset this drive and to make the committee members and your constitutional delegates aware of the opposition of the school people of the State to any constitutional mandate for religious teaching in the public schools and within an already crowded school day." The State Teachers' Association also vigorously opposed using the State taxes for support of children in parochial schools, and giving aid for other purposes to sectarian schools.

Mr. Heffernan introduced a proposal to write a provision into the constitution to grant financial assistance to parochial schools in New York State up to fifty per cent of maintenance costs.

The New York State Council of Churches, which is the official central agency representing the Protestant denominations in New York State, most emphatically opposed all the proposed amendments which would authorize the use of public money for parochial schools. The board of directors of the State Council of Protestant Churches sent the following statement to all members of the Constitutional Convention:

"One of the basic principles upon which our democratic government is founded is the complete separation of church and state. The maintenance of this policy in our country has kept the church alert and active, and much more sensitive to the spiritual needs of the people than in nations where the church is subsidized by the state. A state-supported church often loses its vitality, and religion becomes a matter of form and ceremony, having little spiritual content.

"So entirely committed are we, as a democratic people, to this policy of complete separation of church and state that any attempt to change it and make possible state support of religious institutions is against the best interests of public welfare. Therefore, the New York State Council of Churches emphatically objects to the proposed amendment to our State constitution, introduced by Mr. James J. Heffernan, which would grant financial assistance up to fifty per cent of maintenance costs for parochial schools in New York State.

"Should this amendment be approved by the Constitutional Convention, it would raise the religious issue in the annual election next fall, and this State would again be swept by a campaign of religious antagonism which would be detrimental to the spiritual interests of our citizens, as it would engender hatred and animosity.

"If such aid were to be given to parochial schools, every religious denomination and sect in the State would also be privileged to develop schools, over which the State, city, and county would have no control as to property right or curriculum. Thus a competitive campaign of sectarian-school development would be inaugurated, each sect entitled to fifty per cent support from State funds.

"Moreover, the withdrawal of such sums from the monies raised by taxation for the support of the public schools, would reduce the money available for our public-school system and thereby greatly cripple that system, or would require such monies taken for parochial schools to be replaced by additional monies to be raised by taxation, thereby increasing the general tax burden."

In visiting the New York State Constitutional Convention, we were glad to find that the great majority of the delegates to the Convention were opposed to these proposed amendments. We not only found those of the Protestant and Jewish faiths strongly arrayed against these innovations, but we found some of the Catholic faith strongly opposed. We found one Catholic attorney who was doing most of the lobbying for a certain group of Catholic priests in behalf of these parochial-school measures. But the broad-minded, thinking Catholic felt that the Catholic Church could not afford to ask for such state aid unless the Catholic Church were ready to surrender its independence of teaching over to the control of the state.

All thinking Catholics, who know anything of past history, know that state aid ultimately means state control of their schools, and that is one thing the Catholic does not want. The embarrassments which logically flow from financial alliances between the church and the state are so far-reaching and devastating as to cause many to fear. Any one who surrenders the independence of religious teaching to state control for the sake of state patronage, is doubly blind. Those who possess truer knowledge should correct the zeal of the zealots.

State Aid for Catholic Schools

by JOHN B. COLLINS

[This striking article appeared as an editorial in the *Pittsburgh Catholic* of March 17, 1938, the official organ of the diocese of Pittsburgh. This journal was established in 1844, and that it still represents the Catholic Church in the Pittsburgh diocese is evident by this statement from Bishop Hugh C. Boyle given on the feast of St. Ambrose, 1937: "I appoint the *Pittsburgh Catholic* an official diocesan organ, and commend it to the priests of the diocese, and to readers, of every way of thinking, who are concerned to know the Catholic attitude in the affairs of a grievously perplexed world."

While LIBERTY may not agree with all this Catholic editor says, it wholeheartedly approves of his conclusions. At the risk of alienating the good will of some of our Catholic friends, we have repeatedly said that those who have sought State aid for parochial schools, have not been the best friends of the Catholic Church. —EDITOR.]

THE FACT that the report recently presented by the President's Advisory Committee on Education includes a recommendation—and it is only a recommendation—for granting some Federal funds in aid of children attending private and parochial schools, has raised again the issue of whether or not public funds should be devoted to the support of nonpublic schools. By all the canons of justice, logic, fair play, and common sense, they should; no argument on such grounds can be brought against the proposal.

The State wants educated citizens; it establishes minimum standards for such education; it appropriates money to pay the cost of the schooling required to attain such education; this money comes from taxes paid by all the people; then a share of the money should go to all the schools that prepare pupils according to the State's educational standards, whether these schools are directly managed by the State or not. There is no flaw in this argument.

The claim that if the State granted funds to schools conducted by a religious organization it would thereby be supporting that religion, is without weight; for the State would pay for only the secular training given the pupils. The fact that the State accepts the training given in private and parochial schools as meeting the requirements of the compulsory education laws, is evidence enough that it should compensate such schools for the work they do, which would otherwise have to be done by public schools.

In the last analysis, it should be remembered, it is the parents and not the State who are responsible for the children. The State, for its own welfare, may insist on a certain amount of education, but, as the Supreme Court has decided, it cannot deny parents the right to have this education presented under moral and religious influences. When the State refuses to pay the prorata cost of education given under such circumstances, it exercises, in effect, a form of coercion against religion and morality. Especially under prevailing economic conditions, the preference thus given secular schools is depriving thousands of children of religious training.

And yet there are weighty reasons why Catholics should not seek the State contributions for the education furnished by their schools, to which, in all justice, they are entitled. These reasons have been repeatedly set forth by leaders of the church in this country. They have dictated the position taken by Catholics thus far, and their importance is strongly confirmed by recent developments. When State funds are accepted, some measure of State interference and control must also be accepted. State money for Catholic schools means close dealings with public officials; it means political connections; it means dictation regarding the manner in which the schools are to be conducted.

Textbooks which are purchased with State funds must be books approved by the State, or rather, by the administrative officials of the moment. Even the incidental services, such as transportation of pupils, library and laboratory services, care of health, and similar items, in which there is now considerable cooperation with the Catholic schools by public authorities, carry a measure of interference and control which cannot be disregarded. Under favorable conditions, assistance from the public treasury is a handicap and a difficulty; under unfavorable circumstances, it can become a catastrophe.

The entire history of the church, emphasized by recent events, shows that public funds come at too dear a price. Mexico had state aid, and so had Spain, and Germany, and Italy, and France. And it proved a weakening, demoralizing connection. Better the sacrifice and the limitations which independence requires, than the unsound edifice built on the deceptive, treacherous basis of state aid.



PHOTO BY J. C. ALLEN

State Aid for Denominational Schools Is a Threat to the Principle of the Separation of Church and State



Sunday Law Acts as a Boomerang Against Church

by CHARLES S. LONGACRE

THE PASTOR of the Methodist Episcopal church of Sweetser Station, Indiana, preached a sermon favoring a more drastic enforcement of the Sunday laws of Indiana. A little later he preached another sermon on a Sunday morning, making an earnest appeal to the congregation and all present to subscribe to the church-building fund.

A Mr. Catlett was mightily moved by the soul-stirring appeal of the pastor, and filled out a contract on Sunday morning to subscribe a liberal sum for the church building fund. But as time went on, the stirring effect of the good sermon wore off, and Mr. Catlett drifted back into his former irresponsible and careless ways and lost his love for religion and the church.

The Sweetser church attempted to collect the subscription, and sued on a breach of the contract made previously on a Sunday morning. The case was finally appealed to the supreme court of the State of Indiana. The defendant, Mr. Catlett, called upon the supreme court to interpret the Sunday law relative to the legality of contracts made on Sunday. He called attention to the fact that the pastor favored a rigid enforcement of the Sunday law in every detail, and that he had eloquently pleaded that no work or business should be permitted on Sunday.

The Methodist Episcopal church, which was plaintiff and had sued on the contract, suddenly discovered to its sorrow that it could not enforce a contract made on Sunday, for the supreme court of Indiana ruled that financial contracts made on Sunday were illegal, and that therefore the church could not collect. The

Sweetser Methodist Episcopal church was strongly in favor of Sunday laws until the supreme court, called upon to interpret the law, construed it to the church's financial embarrassment. Itself accused of being a violator of the Sunday law, the church of Sweetser lost its ardor for the future enforcement of this particular law. The whole experience served as a boomerang.

A Double-Edged Sword

A MASSACHUSETTS SUNDAY LAW made it illegal to travel or ride horseback on Sunday, except to and from church. It was considered not only irreligious, but "against the peace and dignity of the Commonwealth of Massachusetts."

Jonathan Dwight, whose zeal in religion led him to wage war upon all those who did not observe Sunday according to his notions, noticed one George Pearce riding horseback on Sunday for pleasure, contrary to the Sunday law of Massachusetts. His zeal in religion urged him to rush to the nearest magistrate, with whom he lodged a complaint and secured an issue of a warrant on Sunday for the arrest of Mr. Pearce. He gave the warrant to Officer John Atwood to serve on Pearce. The officer immediately proceeded to take the Sunday-law violator into custody that same Sunday, and locked Mr. Pearce in the local jail from Sunday noon until Monday morning.

But on Monday morning the worm turned, and the two-edged sword cut backward and hewed the officer. Mr. Pearce was no longer the defendant, but the plaintiff, and sued the officer for violating

the Sunday law and for false arrest. First, Mr. Pearce proved to the court that the local magistrate had exceeded his authority, because under the Sunday law he had jurisdiction to order arrest of those of his own county only who rode on Sunday. Mr. Pearce was from another county.

Secondly, he proved to the court that according to the Sunday law, no work or business was permitted on Sunday "except works of charity or necessity." He convinced the court that his arrest was absolutely not a "work of charity," and also that since Pearce was well known as a law-abiding citizen of the State and highly respected throughout the State, and would have been easily available for arrest the following day, therefore his incarceration in jail was not a "work of necessity."

Again the Sunday law served as a boomerang, and damages to the amount of \$500 were awarded against the overzealous and perturbed officer. It was too bad that the court did not see its way clear to assess a similar amount of damages against the overzealous Mr. Jonathan Dwight, who had more zeal than knowledge in religion.

Washington Stopped by Tithingman

CONNECTICUT had a Sunday law which forbade unnecessary walking, riding, or traveling on Sunday. Only going to and from church was permissible. The State of New Jersey still has such a provision in its Sunday laws.

The Puritan tithingman, who collected the tithes by law for the benefit of the church, was also zealous to collect all the fines possible for the benefit of the church from all those who took too great liberties on Sunday. He was always doing sleuth work on Sunday, spying out other people's liberties, and informing the civil magistrate concerning all those who contravened the drastic provisions of the Sunday laws. He served much the same purpose as the Lord's Day Alliance does in our present time, whose officials sometimes do detective work on Sunday and then give the information about Sunday-law violators to the police courts on Monday morning. The tithingman of New England was not satisfied with a fine only, but he derived a great deal of satisfaction in seeing the Sunday-law violator "set in stocks" and "confined in the cage on the meeting house green, with the Lord's day sleepers."

The great and small, the rich and the poor alike, were caught in the Sunday-blue-law net, as the following account from the *Columbian Centinel* of December, 1789, abundantly proves:

"The President [George Washington], on his return to New York from his late tour through Connecticut, having missed his way on Saturday, was obliged to ride a few miles on Sunday morning in

order to gain the town at which he had proposed to have attended divine service. Before he arrived, however, he was met by a tithingman, who, commanding him to stop, demanded the occasion of his riding; and it was not until the President had informed him of every circumstance and promised to go no further than the town intended that the tithingman would permit him to proceed on his journey.'" —*American State Papers,* p. 38.

Any one who desired to travel on Sunday in Puritan New England was required to get a "ticket," or "permit," to travel from the tithingman of the church or from some other chosen officer of the church. Any one who traveled on Sunday without such a permit, or "dispensation of grace," from a proper church officer, was subject to arrest. The provision in the Sunday law read as follows: "It shall be lawful for the constable or any man that meets him to take him up and stop him until he be brought before authority or pay his fine for such transgression as by law in that case is provided."

Recently a Methodist Episcopal bishop appeared at a Sunday-law hearing before the New Jersey legislative committee in Trenton, and requested that the legislature enforce the existing Sunday laws of that State. The bishop was asked if he did any traveling on Sundays. He replied that he sometimes traveled as far as 90 to 100 miles on Sundays. He was then informed that the present Sunday law of New Jersey has a provision that nobody be permitted to travel in New Jersey more than a distance of twenty miles "going to or returning from church or place of worship." After this Sunday-law boomerang hit the bishop, he replied: "Well, I think that section of the Sunday law is out of date, and it ought to be repealed."

Whenever the Sunday laws act as a boomerang on us we want them repealed, because we think they are ridiculous and obsolete, but why should we not accord the same tolerant spirit of the golden rule to others who happen to see things in a little different light than we do? That and that only is religious liberty. The civil government ought to enforce only civil things and to remain neutral in religious matters.



George Washington and the Tithingman

America—The Theater of Liberty

by C. E. HOLMES

THE CITIZENS OF AMERICA . . . are to be considered as the actors on a most conspicuous theater. . . . This is the moment when the eyes of the whole world are turned upon them."—"*Writings of Washington*," Vol. X, p. 255. These were the words of General George Washington in a letter to the governors of the States when the Revolutionary Army was disbanded and a new government was about to be set up.

Independence had been won. A people had cut loose from the apron strings of their mother country; they were now on their own initiative. How would they act? For the first time in history a nation of freemen had the opportunity to frame their own laws in a time of peace.

Those rugged and honest patriots heard sneers and prophecies of failure on every side; they knew they were under observation as to their sanity. Had not old "gray-haired" nations declared that men cannot govern themselves, but must have a ruler over them? The thought of this responsibility spurred our forefathers on to do their best. "The preservation of the

sacred fire of liberty, and the destiny of the republican model of government," said Washington, "are justly considered as *deeply*, perhaps as *finally* staked, on the experiment entrusted to the hands of the American people."—"*First Inaugural Message*," 1789.

"Such a glorious cause," declared Lafayette, "had never before attracted the attention of mankind: it was the last struggle of Liberty; and had she then been vanquished, neither hope nor asylum would have remained for her. The oppressors and oppressed were to receive a powerful lesson: the great work was to be accomplished, or the rights of humanity were to fall beneath its ruin."—"*Old South Leaflets*," No. 97.

We know that they did not fail. Under the direction of Washington and his fellow patriots there was produced upon this great American theater the most stupendous production of modern times, if not of all times—the Constitution of the United States.

The hero of this drama was no other than Washington himself. Without his power and influence as the leading star, the production would not have succeeded. "Were it not for one great character in America, so many men would not be for this government," said William Grayson in the Virginia Constitutional Convention, speaking of Washington. "We have one ray of hope. We do not fear while he lives; but we can only expect his fame to be immortal. We wish to know who, besides him, can concentrate the confidence and affections of all America."—"*Elliot's Debates of the Constitution*," Vol. II, p. 616.

Eulogies From Abroad

Whether the nations loved or hated liberty, they watched its planting and rapid growth with interest, and often with fear, for wherever it took root, it spelled the downfall of tyranny. As this drama of liberty under the Constitution was played before the world, it produced a profound impression. Rulers and statesmen sitting in the audience have been constrained to acknowledge its intrinsic value and to express admiration for its principles.

Napoleon was one of the first to catch a glimpse of its worth. He noted the principles of civil and religious liberty it provided. When the United States purchased the Louisiana Territory in 1803, Article III of the treaty is "said to have been drawn by Napoleon himself." It reads:

"The inhabitants of the ceded territory shall be



A. J. KELLER, ARTIST

No Place Was Dearer to the Heart of Our First President Than His Home at Mount Vernon. Here He and Mrs. Washington Often Entertained Their Host of Admiring Friends

incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and religion which they profess."—*State Papers and Correspondence Bearing Upon the Purchase of the Territory of Louisiana,* p. 254.

In 1876 Emperor William of Germany sent the following message to President Grant:

"The purpose of its [America's] founders has, by a wise application of the teachings of the history of the foundation of nations and with insight into the distant future, been realized by a development without a parallel."—*Foreign Relations,* 1876, p. 173.

Noting the power and prestige of America after a century of growth under the Constitution, Gladstone, England's grand old statesman, wrote, when invited to attend the centennial celebration of the adoption of that instrument:

"I have always regarded that Constitution as the most remarkable work known to me in modern times to have been produced by the human intellect, at a single stroke (so to speak), in its application to political affairs."—*The Constitution of the United States,* Carson, Vol. I, p. 402.

Georges Clemenceau, "the Tiger" of France, in a message to the American people (*Cosmopolitan Magazine*, November, 1905), paid his respects to our performance:

"Your destiny was to work freely on a cleared and open field at an epoch when the chief data of modern society were already being evolved. You have begun afresh, from one end to another, whereas the old European nations continued to work on the ancient foundations, lopping and patching up the shreds of discredited institutions, completing them with new portions more or less adapted to the purpose. . . .

"In the matter of religious liberty, your work was the more deserving as your great Puritan ancestors, beginning with the 'blue laws' of New England, thought to found their ideal society on an absolute confession in the political and religious arenas. But into this very religious arena itself, reform brought her fertile seed of the New World,—liberty,—and with your care the little grain pushed down its timid roots, and spread out toward the sky a frail stem from among the wild rocks of New England. A century and more has passed since then, and now the tree extends its majestic branches over an immense civilized continent."

Some in the world audience not so well known have also enthusiastically endorsed our production.

FOURTH QUARTER



May the Light of Liberty Never Cease to Shine Upon These States

Their testimonies have been repeated literally by the million. In early days, 1783, a Welsh clergyman wrote to John Jay regarding our land of freedom:

"I, with many more of the principality of Wales, intend, if God is willing, to cross the Atlantic to a land of freedom and liberty where the meanest person is made more happy, if not greater, than generals, kings, emperors, or popes by the conduct and bravery of the great and immortal Washington, who has outshined and eclipsed all Asiatic, African, and European generals, and commanders from the creation of the world, to this day."—*Correspondence and Public Papers by John Jay,* Vol. III, p. 92.

Many Watching America

Separated some distance by years, but not far in thought, is this eulogy by a Mexican. John W. Foster, our ambassador to Mexico, sent to the United States Department of State an editorial from the *Porvenir*, whose editor, Mr. Vigil, was "one of the most intelligent writers in Mexico:"

"Very near us is the example we ought to follow; the American democracy is the great beacon light toward which is directed the gaze of all those who see in the republic the saving institutions of the people, the protective banner of these rights, the shield of all the guaranties which give security to life and property. Washington and Franklin, those fine types of republican honesty, of unsullied rectitude, of practical good sense, are the models that the liberal party ought to place before themselves."—*Foreign Relations,* 1875, Vol. II, p. 874.

In spite of the successful operation of our government for 150 years, there are those in America today who insist that the scenery is out of date, the script needs rewriting, and the actors are too old-fashioned. The times have changed, it is true, but we question whether for the better. The same forces and elements are here, as they have ever been. The ranting radicals, though they are out hunting for the rights and properties of others, still claim their own prop-

erty and their own liberties under the Constitution.

The great principles of human rights, which are crystallized in that document, are eternal and belong to every soul. They are essential in the legislative hall and in the judicial chamber today.

"There are two documents that I have always considered sacred, that should be held inviolate, the one moral, the other political," said Sir Donald MacDonald, editor of the *Edinburgh Chronicle*, in an address before the Illinois Manufacturers' Association. "The one, the decalogue of Moses, and the other, the Constitution of the United States of America."—*Manufacturers' News, January, 1929.*

"The eyes of the whole world are turned upon them," wrote Washington; and Hamilton similarly stated that "the world has its eye upon America." But Franklin saw another Eye intently watching the building of this nation. Speaking to the delegates of the Constitutional Convention, he said: "The longer I live, the more convincing proofs I see of this truth—that God governs in the affairs of men. And if a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without His aid?"

Will the citizens of this great nation act their parts to preserve, before a cynical and unsympathetic world, the divine principles of truth, justice, liberty, and equity bound up in that precious heritage—the Constitution? Will they be heroes like our forefathers, or will they be the villains, as described by Washington?

"Liberty is the basis, and whoever would dare to sap the foundation, or overturn the structure, under whatever specious pretext he may attempt it, will merit the bitterest execration, and the severest punishment, which can be inflicted by his injured country."—*Writings, Vol. X, p. 258.*

It is a time once more for every true American to look to the foundations; to watch for the sappers and miners who would undermine and destroy our liberties. Liberty must be maintained in all its power and magnificence.

Checks and Balances in the Federal Government

(Continued from page 6)

jury, etc. When the right to cast a free ballot is gone, the power to defend these other rights is gone also.

The Constitution provides that the "powers not delegated to the United States . . . are reserved to the States, respectively, or to the people." To this day the power to nominate or elect public officials has not been delegated by the people to any person or any group. Through all the history of this nation the people have been jealous of the franchise.

In the beginning the Federalist papers said this: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."

Jefferson feared that "if ever this country is brought under a single government, it will be one of the most extensive corruption" and "as venal and oppressive as the government from which we separated."

As long as the people are free, they can cure any mistakes they may make in free elections every two or four years. No mistake becomes final. No evil is without remedy. No deviation from democracy becomes destiny.

For centuries men of our race died on the battlefield, or in prison, or on the gibbet, or under the ax, or were burned alive, in order to secure these rights obtained by our Revolution and secured to us by our Constitution. Never until our government was formed had the citizens control of their own elections. Never before could they ratify or reject treaties; confirm or refuse to confirm judges, ambassadors, and other important officials; elect Presidents; impeach them; decide whether they shall go to war—in a word, completely govern themselves.

The Whence, the What, and the Why of Our Constitution

(Continued from page 9)

that these utterances were treasonable, and that seventeen years afterward Wise was at the head of a Confederate regiment attempting to put into effect the doctrine which Adams and his associates had declared, and was being denounced as a traitor for so doing by those who had sympathized with Adams and his associated colleagues who had declared the doctrine.

The Union Cemented

By the time of the Civil War we would have been a nation but for the two issues of slavery and the protective tariff, which, side by side, were an impenetrable foreign substance lying between the two great sections, North and South, the States of which sections were then firmly united. The fibers of union could not penetrate them. We broke at this point of weakness. The Southern States seceded because they had lost control of the Federal organization. The non-Southern States had gained control. They did not secede. Nobody secedes from what he controls. We of the South have made much of our constitutional right to secede. Unquestionably we had it. But we overlooked an important fact. Governments are provided for in the plan of nature. There is such a thing as a natural instinct of self-

preservation. Nations do not consent to their dissolution. It is clear that if the other sections had sought to break away at that time, the Southern States would have gone to war to resist that effort. The attitude of the Southern States in supporting Jackson when he had threatened to coerce South Carolina over the nullification controversy, makes it clear that even at that time no minority in point of military strength could voluntarily have left the Union.

It was probably not until after the Spanish-American War that the States of our Union became thoroughly welded into a nation. I am inclined to the opinion that not until after the World War was that a fact.

Only One Constitution Possible

Whether or not in the beginning we had a dual system of government, apparently we do not have such a system now. We do not have two Constitutions. We have but one Constitution. We can have but one Constitution. In the sense that it is written, it is found in part in the Federal document and in part in the State documents. There is no natural rivalry or proper conflict between the States and the Federal Government. They are parts of the same thing. They are one government, a part of the powers of which are exercised through the State organizations and a part through the Federal organization. Just as it was true in England and has been true through the centuries of our governmental history, the liberty and the security of the people have always been in proportion to the vigor of their local governments. It necessarily follows from that fact that in proportion as the people surrender, or are relieved from, governmental responsibility which lies within the governmental capacities of the smaller units of government, in that same proportion do they deprive themselves of the opportunity to develop that capacity of self-government which is essential to the preservation of liberty. No people were ever able to remain free who lost their ability to govern.

These observations are not aside from the subject under consideration. Our Constitution is the Constitution of a government by the people. The thing of first importance in such a government under the most fundamental requirement of that Constitution is the preservation of the capacity of the people to perpetuate that system of government. Whatever operates to increase that capacity is in line with the nature of the Constitution. Whatever operates in the contrary direction is in violation of the nature of that Constitution. It would seem to be sound in principle in harmony with the law of its nature that all true progress under that system must be in that direction which puts the necessity to govern, and the opportunity to govern, closer and closer to the people

who are the governors upon whose ability the government must depend.

The "Why" of Our Constitution

The next division of our topic which we are to consider is the "Why" of our Constitution. The answer lies deep in the mystery of what it is all about, the purpose and the plan of human beings living for a while on this little planet which we call the earth. Why do people have to have governments? Why is there oppression in the world? Why do we have friction? Why are there such great difficulties associated with the operations of systems of free government?

The answer to what it is all about seems not to be difficult. The facts seem clearly to establish that what it is all about is the development of human beings. That is what it is all about. The plan is to have them do things, to induce them to do things, to compel them to do things or be punished; to provide them with difficulties as their gymnastic paraphernalia; to give them greater ability when the ability possessed is used; to take from them ability not used.

Practically applied, people learn how to govern by governing. They increase their ability to govern by using whatever ability they possess. They forget how to govern by not working at the job. The fact that there shall be government is fixed in human necessity. Either the people govern, or they are themselves governed. It is nature's plan that people shall govern themselves, not that they may thrill because they are free, or even that they may escape tyranny because they are free, but that being free and self-governing they must struggle with the difficulties of government and, thereby, themselves progress by the development which comes from that struggle.

Dangers Threatening the American Principle of Government

(Continued from page 15)

has had the positive guaranty of personal liberty. He has not been subjected to ruinous domination in his private affairs, or in his religious convictions.

The national government has stood for the preservation of the individual interest, to the utmost extent possible in the conduct of public affairs, and the maintenance of a free citizenship. In a totalitarian state, those who seize upon dictatorial powers have slight regard for majorities or minorities; all must needs give way to those in absolute control. The problem that is left for Americans to solve, now that we are at the parting of the ways, is how are we to preserve the American principle of government and conserve the liberties that have been vouchsafed to us.

• Editorials •

Colonial Governments Strongly Religious

EVERY ONE of the thirteen original colonies, at the time they declared their independence in 1776, had a legally established church. In New England the established church was the Puritan Congregational Church; in New York, the Dutch Reformed Church; in New Jersey, Pennsylvania, Maryland, and Delaware, the Puritan Church; and in the southern States, the Episcopal Church. Some of the States retained their legally established churches for more than fifty years after they came into the Union.

Connecticut did not disestablish its state church till 1834, and Massachusetts not until 1835. Finally all state churches were abolished, but many of the laws regulating religious conduct were retained, and are still existent, upon the State statute books. There are still seven States each having a religious provision in its State constitution forbidding any citizen's holding office in the State, and disqualifying him as a witness or juror, unless he believes in "Almighty God," "the Trinity," and "future rewards and punishments." Most of the States still require all their citizens to conform under the penal codes to certain religious customs, whether or not they hold to divergent religious customs and usages.

One of the early State constitutional conventions seriously considered a constitutional provision excluding "immoral men, Sabbathbreakers, preachers, doctors, and lawyers" from the legislature. At the time our Federal Constitution was drafted, a reaction against political preachers had set in, and most of the States had adopted constitutional provisions excluding ministers from the legislative branch of the government. The republic of Texas, which had just seceded from Mexico, which was under the domination of the clergy, excluded clergymen from the presidency and the congress. They did not want the history of Mexico repeated in Texas, and they felt that the preachers would seek to dominate politics through their church constituencies, and thus corrupt the legislature, and also that politics would have the tendency to corrupt the preachers as well as religion.

Until 1877 the State of New Hampshire had a provision in its constitution making Roman Catholics and Jews ineligible to the governorship. This provision was inserted in the constitution in 1784 and read: "No person shall be eligible to the office of governor unless at the time of his election he shall be of the Protestant religion." It was repealed by an amendment to the constitution.

The State of Alabama until recently had a provision in its constitution which read as follows: "No person who denies the existence of a God shall hold any office in the civil departments of this State, nor be competent to testify as a witness in any court." But the people in Alabama were recently brought to realize the foolishness of such a provision in their constitution. A murder was committed in that State, and the only eyewitness to the murder was an avowed infidel. The court disqualified him as a witness because he denied the existence of a God. The murderer went free because the evidence against him was not admissible in court. This aroused public indignation, and the constitutional provision was forthwith repealed, making it possible for any such citizen to qualify as a witness in court.

The seven States still having constitutional provisions which say that "no person who denies the being of a God shall hold any office in the civil departments of the State," also have another constitutional provision which is a direct contradiction of the former provision which prescribes a religious test for civil office. This provision reads as follows: "No religious test shall ever be required of any person as a qualification to vote or hold office." These two provisions in the fundamental law of these States are irreconcilable.

When Catholics and Jews are forbidden to hold the office of governor, as they were in New Hampshire, and only Protestants are eligible, of course the Catholics and Jews feel that such a constitutional provision is an unjust discrimination against them. On the other hand, when in strong Catholic and Jewish countries, Protestants are by law made ineligible to public office, the Protestants protest against such unfair discrimination.

This all proves that the golden rule is the only practical rule and the only fair and just rule. Civil and religious liberty and the equality of all citizens and all religions before the law as set forth in the Bill of Rights in our Federal Constitution, is the most equitable and practical provision that was ever made by the founders of the American Republic.

A complete separation of church and state and the recognition of the inalienable rights of the individual in the fundamental law of the land, are the only basis for peace, justice, and progress in the domain of religion and the realm of the state. For the state to regiment, regulate, and restrict the inalienable rights of the individual, and to abridge or invade the free exercise of the conscience in religious matters, or for one church to seek the domination of another

church through legislative restrictions upon religious prerogatives and rights, must be considered as a breach of essential justice and a denial of God-given, natural rights. If the dominants would treat the nonconformists and dissidents as they would like to be treated whenever the nonconformists and dissidents become the dominating factors in a government, what a wonderful world this would be! Until all are willing to conform to and apply the golden rule in their dealings with each other in governmental relations, injustice, intolerance, and persecution will be the lot of religious minorities.

C. S. L.

A Crime to Sell Fresh Eggs on Sunday

THE BOSTON *Post* of April 22, 1938, gives an interesting account of an ancient Puritan Sunday blue law that is still being enforced in Boston, a law whereby a husband was once put in the stocks for kissing his wife on Sunday. The *Post* says further:

"You can't buy an uncooked egg anywhere in Boston on Sunday unless you eat it on the premises where you purchase it. It's legal to have the egg fried and take it home between two slices of bread. Or you can have it boiled or even poached and then take it home, or anywhere you wish.

"But it's strictly against the law to buy a raw egg in any Boston establishment on Sunday and take it out with you.

"This is one of the strange quirks in the law which governs the sale of food on Sunday.

"Reuben Lessoff, who operates a store at 82 Belgrade Avenue, Roslindale, testified that he ran afoul of the law as a result of acting as a good Samaritan on a recent Sunday.

"He told the authorities that a small girl broke her leg while roller skating near his store. Leaving his fourteen-year-old son in charge, he took the girl to the hospital, and upon his return learned that the boy had sold some canned goods to a plain-clothes police officer, as well as a dozen eggs."

The Sunday law of Massachusetts does not allow fresh eggs to be sold on that day, but you can buy all the cooked eggs you want. The law of the Puritans does not allow canned goods to be sold in cans on Sunday, but they can be sold when emptied and warmed up. You cannot buy a cabbagehead, but you can buy cabbage slaw. You cannot buy a pig, but you can buy cooked pork. You cannot buy potatoes by the peck, but you can buy potato salad. You cannot buy onions by the pound, but you can buy them sliced or stewed. You cannot buy a loaf of bread, but you can buy slices of bread. You cannot buy a cucumber or a cantaloupe over a grocery counter, but you can buy either in a restaurant.

FOURTH QUARTER

You cannot buy a fresh fish, but you can buy one cooked.

What makes the sale of a fresh, raw article a criminal offense in a grocery store and not a crime when the same article has been cooked or baked and is sold elsewhere on Sunday? It is exceedingly difficult for us to understand how modern statesmen can still enter into these hair-splitting theological questions that the Puritans indulged in some 300 years ago. We can readily understand the workings of the Puritan mind along these lines, because they were able to figure out how many millions of little imps in the spirit world could sit upon the point of a needle without tumbling off, but our modern statesmen are supposed to have outgrown these puerile imaginations of medieval theologians. How long are American citizens going to endure these relics and inconsistencies of Puritanism, invented by theologically distorted minds that believed all offenses against the church creed should be punished by the civil magistrates? It is high time the principles of Roger Williams were recognized and that Americans completely separate the church and the state and cease to enforce religious obligations under duress of the civil magistrate.

How can Massachusetts square itself with the standard of consistency when it permits professional commercialized baseball and the movies to operate full blast on Sunday, and allows the sale of beer and liquor, and then turns round and makes the sale of a dozen fresh eggs a criminal offense on Sundays? O consistency, thou art a jewel!

C. S. L.

National Rededication to Civil and Religious Liberty

A NEW ORGANIZATION has been formed which is known as "National Rededication." According to the *Christian Century*, this organization is to bring about "a reaffirmation of faith in the democratic way of life and the principles of civil and religious liberty."—*June 22, 1938.*

We learn that "its sponsors include such diverse organizations as the Federal Council of Churches, the American Federation of Labor, the National Conferences of Catholic Men and Catholic Women, the Jewish Welfare Board, the National Confederation of Jews and Christians, and the National Grange."

The editor of the *Christian Century* calls attention to a very pertinent matter in connection with such a rededication to civil and religious liberty. He wonders if thoughtful consideration has been given to the meaning of the phrase, "civil and religious liberty." He asks, "Does it, for example, mean liberty only for 'right' opinions and for 'true' religion?" and then he

suggests that "a sufficiently deep probing might reveal that different sponsors of this movement hold quite different ideas as to the meaning of civil and religious liberty."

The thought of "rededication" is a solemn one. It refers to the dedication to the principles of liberty that the founders of this nation once made. It is a noble purpose and may well enlist the interest of every man and woman of this great nation. Nevertheless, we, too, question whether the sponsors are in harmony over the application of this phrase which has been much abused. When one belongs to a minority with little authority, it is natural to cry out for liberty. But how possible it is, as evidenced by history, that as soon as one obtains power the thought of liberty is more remote. Too often it means merely liberty for the person concerned and not liberty as a general principle, applicable to every one.

In these dangerous times, when the liberties of men are being curbed in so many places throughout the world, every thoughtful person should indeed make a true and sincere rededication to the principles of civil and religious liberty. These twin principles have made this nation great, and woe to the inhabitants of this country and the world as well when we turn our back upon them!

F. L.

Good News for LIBERTY Readers

THE last issue of the LIBERTY magazine enjoyed an increase in circulation of more than 100 per cent over the same quarter one year ago. We rejoice exceedingly at this splendid increase of circulation within a single year. We realize that one factor contributing toward this end was the improvement in content and appearance of our unique magazine, as well as the stirring issues dealt with by popular writers. But another factor which greatly aided in its wider circulation, was the burden which many of our readers have taken upon their own shoulders to aid in the extension of this valuable magazine. Thousands of our readers have not only renewed their own subscriptions, but have sent in clubs of LIBERTY subscriptions at their own expense or which they solicited. Three annual subscriptions for LIBERTY, at club rates of 30 cents each, are a good investment that will yield splendid returns in building up better citizenship and loyal Americans devoted to the cause of freedom and the preservation of our democratic institutions as vouchsafed to the American people under our matchless Constitution. Will you not help us during the coming year to add another 100 per cent increase to the annual circulation of the LIBERTY magazine?

C. S. L.

Liberty Secure Only Under a Constitution

THAT WE ARE LIVING in a changing world must be apparent to every one who has given the matter any serious thought. The discovery and settlement of America afforded millions an opportunity to escape from the political despotism of the Old World and to find greater civil and religious freedom in the then New World. This was especially true of the English colonies.

Change came slowly, but the drift was in the direction of increased civil and religious liberty, until by the adoption of the First Amendment to the Constitution of the United States, full and unfettered freedom of conscience seemed to be assured for all time to citizens and even to sojourners within the bounds of the greatest democracy whose influence has ever blessed mankind.

The First Amendment to the Constitution of the great Republic read then and still reads thus:

"Congress shall make no law respecting an 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."

Of course this amendment guaranteed religious freedom only so far as the government of the United States was concerned; but it had a mighty influence upon the several States, for religious persecution here was practically unknown except under State Sunday laws, and these for a number of years were sporadic.

But a change is coming, and the First Amendment to the Constitution of the United States is rapidly giving place to the political rallying cry, "The majority have the right to rule, and they can have whatever they demand." But that is the doctrine of fascism, not of democracy, and is exactly what the First Amendment was designed to make impossible in America.

As framed by the fathers of the Republic, the government of the United States was not a government of majorities, however great, but of law under the Constitution, as framed by the fathers of the Republic. In practice, one man, however humble or poor or friendless, and the Constitution become that majority.

Liberty is safe only under constitutional government, and that only so long as the Constitution is respected and obeyed. The United States can remain truly democratic in a Jeffersonian sense only so long as its courts and executives remain loyal to the Constitution.

C. P. B.



The Red Cross Roll Call

November 11-29, 1938

AGAIN the Red Cross calls, and never before were the needs of this great organization more urgent. In peace time as in war it extends a sympathizing and helpful hand to those in distress.

NEWS and COMMENT

WE have just received a news item from Staten Island, New York, which states that a man was arrested and fined for mowing his lawn on Sunday. We wonder how long the legislators of New York State are going to retain those antiquated Puritan religious laws upon their civil statute books which prohibit everything on Sunday "except works of necessity and charity." That is purely religious legislation, and is un-American.

THE Lord's Day Alliance of Pennsylvania was defeated in its effort to prevent fishing on Sunday in that State. It avows that in the next election the Lord's Day Alliance "will seek the election of men and women who will stand by and support proper sabbath legislation." With their insignificant vote and their un-American policy of mixing religion with politics, they will make about as much impression upon the politicians with their votes as would a schoolboy shooting peas at Gibraltar.

FOURTH QUARTER

THE Lord's Day Alliance of the United States has sent an earnest appeal to the Christian churches of America to raise a fund of \$250,000, which is absolutely necessary to prosecute its work. This fund is necessary, the Alliance says, to bring back the nation to the observance of the fourth commandment, "Remember the Sabbath day, to keep it holy." The Alliance says the nation has been swinging away from the proper observance of this sacred day. We wish to remind the Alliance that the fourth commandment expressly states that, "the seventh day is the Sabbath of the Lord thy God: in it thou shalt not do any work." Before the Alliance attempts to set others right, it ought to set itself right upon the *observance* of the fourth commandment.

LEADING communists in the United States have recently come out openly and demanded that "able, fearless, and outspoken advocates of communism" be selected to teach communism in our public schools. On the other hand, certain zealous religious groups are insistent that religion be taught in the public schools. If one has a right to teach a controversial subject in the public schools, then the other has the same right. But fortunately we enjoy a separation of church and state in the United States, and our public schools have been reserved to teach only established facts and noncontroversial subjects which tend to prepare the youth for citizenship in the state, while the church and the home reserve the right to train their children for heaven, at their own expense. Thus religion and communism are both barred out of our public schools, and rightly so. Discussion of controversial subjects is reserved for the public forum.

THE Retail Grocers' Association of Dallas, Texas, through a voluntary agreement among the grocers of Dallas, succeeded in closing ninety-eight per cent of the food stores on Sundays. Liberty of action is well and good so far. No one should interfere with a voluntary observance of Sunday, if a person prefers to observe Sunday instead of Saturday. The wish is expressed by the president of the Grocers' Association that the rest may fall in line, so that it will not be necessary to force them into line. Forcing people into line in the observance of a religious obligation set apart by a church creed, is what makes Sunday laws reprehensible and unchristian.

THE Constitutional Convention of New York State by a vote of 134 to 9 has adopted a proposal which permits the legislature to provide free transportation to children attending denominational schools. While New York State is thus taking the first step in breaking down a great American principle, President Quezon of the Philippines vetoed a bill recently passed by the Philippine Assembly providing compulsory religious instruction in all public schools.



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LIBERTY

by John Milton Jackson

*From lands across the sea they came,
Those stern-faced men in days of old,
Not theirs the quest for passing fame,
Nor did they come in search of gold.*

*But in each heart there burned a flame
Fresh lit from Freedom's altar fire,
This the great reason why they came
To build for Freedom fair empire.*

*They reared her virgin altar high,
Then placed thereon that holy fire;
They guarded it with jealous eye—
That precious flame, their hearts' desire!*

*When chilled New England winds blew cold,
They garnered in their scanty hoard,
That little band of heroes bold
Assembled round their rough-hewn board.*

*They rendered thanks for corn and game
And for the brown nuts from the wood,
But most of all that Freedom's flame
Was burning brightly where they stood.*

*Still leaps that white effulgent flame
Unsullied by the dross of earth,
As men of every creed and name
Thank Him who gave to Freedom birth.*