

September 17, ~~1937~~ 1937

[Syrian Theatre - Washington, DC]

FDR Speech File

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ADDRESS
BY THE
PRESIDENT
OF THE UNITED STATES

On the 150th Anniversary of the Signing of the
Constitution of the United States

DELIVERED AT THE SYLVAN THEATRE, WASHINGTON
MONUMENT GROUNDS

Washington, D. C., September 17, 1937

Issued by

THE UNITED STATES CONSTITUTION
SESQUICENTENNIAL COMMISSION

SOL BLOOM, *Director General*
Washington, D. C.

MY FELLOW AMERICANS:

Tonight, 150 years ago, 38 weary delegates to a Convention in Philadelphia signed the Constitution. Four handwritten sheets of parchment were enough to state the terms on which 13 independent weak little republics agreed to try to survive together as one strong nation.

A third of the original delegates had given up and gone home. The moral force of Washington and Franklin had kept the rest together. Those remained who cared the most; and caring most, dared most.

The world of 1787 provided a perfect opportunity for the organization of a new form of government thousands of miles removed from influences hostile to it. How we then governed ourselves did not greatly concern Europe. And what occurred in Europe did not immediately affect us.

Today the picture is different.

Now what we do has enormous immediate effect not only among the nations of Europe but also among those of the Americas and the Far East, and what in any part of the world they do as surely and quickly affects us.

In such an atmosphere our generation has watched democracies replace monarchies which had failed their people and dictatorships displace democracies which had failed to function. And of late we have heard a clear challenge to the democratic idea of representative government.

We do not deny that the methods of the challengers—whether they be called "communistic" or "dictatorial" or "military"—have obtained for many who live under them material things they did not obtain under democracies which they had failed to make function. Unemployment

has been lessened—even though the cause is a mad manufacturing of armaments. Order prevails—even though maintained by fear, at the expense of liberty and individual rights.

So their leaders laugh at all constitutions, predict the copying of their own methods, and prophesy the early end of democracy throughout the world.

Both that attitude and that prediction are denied by those of us who still believe in democracy—that is, by the overwhelming majority of the nations of the world and by the overwhelming majority of the people of the world.

And the denial is based on two reasons eternally right.

The first reason is that modern men and women will not tamely commit to one man or one group the permanent conduct of their government. Eventually they will insist not only on the right to choose who shall govern them but also upon the periodic reconsideration of that choice by the free exercise of the ballot.

And the second reason is that the state of world affairs brought about by those new forms of government threatens civilization. Armaments and deficits pile up together. Trade barriers multiply and merchant ships are threatened on the high seas. Fear spreads throughout the world—fear of aggression, fear of invasion, fear of revolution, fear of death.

The people of America are rightly determined to keep that growing menace from our shores.

The known and measurable danger of becoming involved in war we face confidently. As to that, your government knows your mind, and you know your government's mind.

But it takes even more foresight, intelligence and patience to meet the subtle attack which spreading dictatorship makes upon the morale of a democracy.

In our generation, a new idea has come to dominate thought about government—the idea that the resources of

the nation can be made to produce a far higher standard of living for the masses if only government is intelligent and energetic in giving the right direction to economic life.

That idea—or more properly that ideal—is wholly justified by the facts. It cannot be thrust aside by those who want to go back to the conditions of 10 years ago or even preserve the conditions of today. It puts all forms of government to proof.

That ideal makes understandable the demands of labor for shorter hours and higher wages, the demands of farmers for a more stable income, the demands of the great majority of business men for relief from disruptive trade practices, the demands of all for the end of that kind of license, often misnamed "liberty," which permits a handful of the population to take far more than their tolerable share from the rest of the people.

And as other forms of government in other lands parade their pseudo-science of economic organization, even some of our own people may wonder whether democracy can match dictatorship in giving this generation the things they want from government.

We have those who really fear the majority rule of democracy, who want old forms of economic and social control to remain in a few hands. They say in their hearts: "If constitutional democracy continues to threaten our control why should we be against a *plutocratic* dictatorship which would perpetuate our control?"

And we have those who are in too much of a hurry, who are impatient at the processes of constitutional democracies, who want Utopia overnight and are not sure that some vague form of *proletarian* dictatorship is not the quickest road to it.

Both types are equally dangerous. One represents cold-blooded resolve to hold power. We have engaged in a definite, and so far successful, contest against that. The other represents a reckless resolve to seize power. Equally we are against that.

And the overwhelming majority of the American people

fully understand and completely approve that course as the course of the present government of the United States.

To hold that course our constitutional democratic form of government must meet the insistence of the great mass of our people that economic and social security and the standard of American living be raised from what they are to levels which the people know our resources justify.

Only by succeeding in *that* can we ensure against internal doubt as to the worthwhileness of our democracy and dissipate the illusion that the necessary price of efficiency is dictatorship with its attendant spirit of aggression.

That is why I have been saying for months that there is a crisis in American affairs which demands action now—a crisis particularly dangerous because its external and internal difficulties reinforce each other.

Personally I paint a broad picture. For only if the problem is seen in perspective can we see its solution in perspective.

I am not a pessimist. I believe that democratic government in this country can do all the things which common-sense people, seeing that picture as a whole, have the right to expect. I believe that these things can be done under the Constitution, without the surrender of a single one of the civil and religious liberties it was intended to safeguard.

And I am determined that under the Constitution these things *shall* be done.

The men who wrote the Constitution were the men who fought the Revolution. They had watched a weak emergency government almost lose the war, and continue economic distress among 13 little republics—at peace but without effective national government.

So when these men planned a new government, they drew the kind of agreement which men make when they really want to work together under it for a very long time.

For the youngest of nations they drew what is today the

oldest written instrument under which men have continuously lived together as a nation.

The Constitution of the United States was a layman's document, not a lawyer's contract. *That* cannot be stressed too often. Madison, most responsible for it, was not a lawyer—nor was Washington or Franklin, whose sense of the give-and-take of life had kept the Convention together.

This great laymen's document was a charter of general principles—completely different from the "whereases" and the "parties of the first part" and the fine print which lawyers put into leases and insurance policies and installment agreements.

When the framers were dealing with what they rightly considered eternal verities, unchangeable by time and circumstance, they used specific language. In no uncertain terms, for instance, they forbade titles of nobility, the suspension of habeas corpus and the withdrawal of money from the Treasury except after appropriation by law. With almost equal definiteness they detailed the Bill of Rights.

But when they considered the fundamental powers of the new national government they used generality, implication and statement of mere objectives, as intentional phrases which flexible statesmanship of the future, within the Constitution, could adapt to time and circumstance. For instance, the framers used broad and general language capable of meeting evolution and change when they referred to commerce between the States, the taxing power and the general welfare.

Even the Supreme Court was treated with that purposeful lack of specification. Contrary to the belief of many Americans, the Constitution says nothing about any power of the Court to declare legislation unconstitutional; nor does it mention the number of judges for the Court. Again and again the Convention voted down proposals to give justices of the Court a veto over legislation. Clearly a majority of the delegates believed that the relation of the

Court to the Congress and the Executive, like the other subjects treated in general terms, would work itself out by evolution and change over the years.

But for 150 years we have had an unending struggle between those who would preserve this original broad concept of the Constitution as a layman's instrument of government and those who would shrivel the Constitution into a lawyer's contract.

Those of us who really believe in the enduring wisdom of the Constitution hold no rancor against those who professionally or politically talk and think in purely legalistic phrases. We cannot seriously be alarmed when they cry "unconstitutional" at every effort to better the condition of our people.

Such cries have always been with us—and, ultimately, they have always been overruled.

Lawyers distinguished in 1787 insisted that the Constitution itself was unconstitutional under the Articles of Confederation. But the ratifying conventions overruled them.

Lawyers distinguished in their day warned Washington and Hamilton that the protective tariff was unconstitutional—warned Jefferson that the Louisiana Purchase was unconstitutional—warned Monroe that to open up roads across the Alleghanies was unconstitutional. But the Executive and the Congress overruled them.

Lawyers distinguished in their day persuaded a divided Supreme Court that the Congress had no power to govern slavery in the territories, that the long-standing Missouri Compromise was unconstitutional. But a War Between the States overruled them.

Lawyers distinguished in their day persuaded the Odd Man on the Supreme Court that the methods of financing the Civil War were unconstitutional. But a new Odd Man overruled them.

That great Senatorial constitutional authority of his day,

Senator Evarts, issued a solemn warning that the proposed Interstate Commerce Act and the Federal regulation of railway rates which the farmers demanded would be unconstitutional. But both the Senate and the Supreme Court overruled him.

Less than two years ago 58 of the highest priced lawyers in the land gave the Nation (without cost to the Nation) a solemn and formal opinion that the Wagner Labor Relations Act was unconstitutional. And in a few months, first a national election and later the Supreme Court overruled them.

For 20 years the Odd Man on the Supreme Court refused to admit that State minimum wage laws for women were constitutional. A few months ago, after my message to the Congress on the rejuvenation of the Judiciary, the Odd Man admitted that the Court had been wrong—for all those 20 years—and overruled himself.

In this constant struggle the lawyers of no political party—mine or any other—have had a consistent or unblemished record. But the lay rank and file of political parties *has* had a consistent record.

Unlike some lawyers, they have respected as sacred *all* branches of their government. They have seen nothing *more* sacred about one branch than about either of the others. They have considered as *most* sacred the concrete welfare of the generation of the day. And with laymen's common-sense of what government is for, they have demanded that all three branches be efficient—that all three be interdependent as well as independent—and that all three work together to meet the living generation's expectations of government.

That lay rank and file can take cheer from the historic fact that every effort to construe the Constitution as a lawyer's contract rather than a layman's charter has ultimately failed. Whenever legalistic interpretation has clashed with contemporary sense on great questions of

broad national policy, ultimately the people and the Congress have had their way.

But that word "ultimately" covers a terrible cost.

It cost a Civil War to gain recognition of the constitutional power of the Congress to legislate for the territories.

It cost 20 years of taxation on those *least* able to pay to recognize the constitutional power of the Congress to levy taxes on those *most* able to pay.

It cost 20 years of exploitation of women's labor to recognize the constitutional power of the States to pass minimum wage laws for their protection.

It has cost 20 years already—and no one knows how many more are to come—to obtain a constitutional interpretation that will let the Nation regulate the shipment of national commerce of goods sweated from the labor of little children.

We know it takes time to adjust government to the needs of society. But modern history proves that reforms too long delayed or denied have jeopardized peace, undermined democracy and swept away civil and religious liberties.

Yes, time more than ever before is vital in statesmanship and in government—in all three branches of it.

We will no longer be permitted to sacrifice each generation in turn while the law catches up with life.

We can no longer afford the luxury of 20-year lags.

You will find no justification in any of the language of the Constitution for delay in the reforms which the mass of the American people now demand.

Yet nearly every attempt to meet those demands for social and economic betterment has been jeopardized or actually forbidden by those who have sought to *read* into

the Constitution language which the Framers refused to *write* into the Constitution.

No one cherishes more deeply than I the civil and religious liberties achieved by so much blood and anguish through the many centuries of Anglo-American history. But the Constitution guarantees liberty, not license masquerading as liberty.

Let me put the real situation in the simplest terms. The present government of the United States has never taken away and never will take away any liberty from any minority, unless it be a minority which so abuses its liberty as to do positive and definite harm to its neighbors constituting the majority. But the government of the United States refuses to forget that the Bill of Rights was put into the Constitution not only to protect minorities against intolerance of majorities, but to protect majorities against the enthronement of minorities.

Nothing would so surely destroy the substance of what the Bill of Rights protects than its perversion to prevent social progress. The surest protection of the individual and of minorities is that fundamental tolerance and feeling for fair play which the Bill of Rights assumes. But tolerance and fair play would disappear here as it has in some other lands if the great mass of people were denied confidence in their justice, their security and their self-respect. Desperate people in other lands surrendered their liberties when freedom came merely to mean humiliation and starvation. The crisis of 1933 should make us understand that.

On this solemn anniversary I ask that the American people rejoice in the wisdom of their Constitution.

I ask that they guarantee the effectiveness of each of its parts by living by the Constitution as a *whole*.

I ask that they have faith in its ultimate capacity to work out the problems of democracy, but that they justify

that faith by making it work now rather than 20 years from now.

I ask that they give their fealty to the Constitution *itself* and not to its misinterpreters.

I ask that they exalt the glorious simplicity of its purposes rather than a century of complicated legalism.

I ask that majorities and minorities subordinate intolerance and power alike to the common good of all.

For us the Constitution is a common bond, without bitterness, for those who see America as Lincoln saw it "the last, best hope of earth."

So we revere it—not because it is old but because it is ever new—not in the worship of its past alone but in the faith of the living who keep it young, now and in the years to come.

Draft after
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The world of 1787 provided a perfect opportunity for the organization of a new form of government thousands of miles removed from influences hostile to it. With the unity provided by the Constitution we could lose our newly-won independence [only through] the improbable chance of [an] attack by a European coalition. How we then governed ourselves did not greatly concern Europe. Except as it affected our foreign trade, what occurred in Europe did not greatly affect us.

It is a century and a half later. The world presents a very different picture.

Today what we do here has an enormous and immediate effect not only on the nations of Europe but also on the many other nations in the Americas and in the Far East. And in the same way, whether we like it or not, what goes on in the other nations has an enormous and immediate effect upon every citizen



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From the Papers of

Samuel I. Rosenman

DRAFT A

9/12

Draft after
TGC and Speed
Speech to F.R.A.
Hyde Park 9/12
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Tonight, 150 years ago, thirty-eight weary delegates to the Constitutional Convention at Philadelphia signed the Constitution of the United States.

A third of those who had originally gathered, embittered by legalistic and sectional differences, had given up and had gone home. The moral force of Washington and Franklin -- men experienced in the flexible give-and-take of life -- kept the rest together. Those remained who cared the most; and caring most, dared most.

What they signed was simply two handwritten sheets of parchment. But these two sheets of parchment were enough to state the terms on which thirteen independent weak little republics agreed to try to survive together as one strong nation. And upon those terms thirteen little seaboard republics of three million colonists have succeeded in becoming one great nation of 130 million Americans.

The world of 1787 provided a perfect opportunity for the organization of a new form of government thousands of miles removed from influences hostile to it. With the unity provided by the Constitution, ^{The main way} we could lose our newly-won independence [only through] the improbable chance of [an] attack by a European coalition. How we then governed ourselves did not greatly concern Europe. Except as it affected our foreign trade, what occurred in Europe did not greatly affect us.

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of the United States. Physical contact across the oceans has been reduced from several months to a few days, and, by air, to a matter of hours. Contact by word or picture is instantaneous. Public opinion between nations no longer need be formed by letter and news sheets which are months old. In a flashing second, radio propaganda now filters across boundaries into the very homes of the people.

The world of 1937 is a single earthquake zone; a shock anywhere strikes everywhere; the slightest tremor anywhere registers on the seismograph of this generation's expectations of government. It is in this atmosphere that for over twenty years we have watched democracies replace monarchies which had failed their people and dictatorships displace democracies which had failed to function. And of late we have seen a definite world challenge to the whole democratic idea of government.

We would deceive ourselves, to deny that the methods of dictatorial government have brought the people who live under them things they wanted but could not get under the ineffective governments that were displaced. We of the democracies of the world must concede frankly that there has been great material improvement in the nations which had previously failed to make their democracies function -- compared with their former condition. Unemployment has been greatly lessened -- even though the cause is production of armaments. Order prevails -- even though it is maintained by fear. Housing conditions are better, health facilities are better, social insurance is established. These reforms have sprung from the pronouncements of one man or of a small group in complete control of the nation, rather than from a cooperative insistence on the part of the people themselves, but -- they do exist.

Such indeed has been the surface success of new forms of government, whether they be called "communistic" or "dictatorial".



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JO STANISZEWSKI

or "military", that their leaders are emboldened to prophesy the early end of democracy, to laugh at all constitutions, and to predict the copying of their own methods by all the other ^{and} ~~most~~ nations of the world.

That attitude, that prediction ^{and} ~~are~~ ^{these} ~~is~~ rightly denied by the people of every nation who still believe in democracy -- that is, by the overwhelming majority ^{of the total} of the nations of the world and by the overwhelming majority of the ^{total} population of the world.

And the denial is based on two reasons eternally right.

First, men in the present development of education and civilization will not for any length of time tamely turn over ^{control} to one man or any group of men what purports to be the permanent conduct of their government. They insist on the right to choose ^{will eventually} ~~not stay~~ who shall govern them ^{and} the periodic expression of that right ^{exists now in the United States} by the free exercise of the ballot.

Second, they are horrified to see the state of world affairs which has been brought about by these new forms of government, and which threatens not merely personal existence but the existence of civilization itself as we know it. They see armaments piling up and deficits growing. They see trade barriers multiply and merchant ships illegally seized or sunk on the high seas. They see these new forms of government spreading fear throughout the world -- fear of aggression, fear of invasion, fear of revolution, fear of death.

And so the people of America are rightly determined to keep that growing menace from our shores.

The dangers to us from this new kind of dictatorial government are of two kinds -- one external and obvious, and one internal and insidious. The first -- the physical danger of



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For example, that purposeful vagueness dominated even ~~the Constitution~~ such an important subject as the Supreme Court. Contrary to the belief of ~~some~~ Americans of this generation, the Constitution says nothing about giving the Supreme Court a ~~veto power over legislation~~. Specifically ~~it~~ twice voted down a proposal to give the Court a ~~general~~ veto power over legislation. And likewise ~~they were not specific about the organization~~ of the Supreme Court. There is no mention of the number of judges ~~for instance~~ in the Constitution. It is clearly that a majority of the Constitutional Convention believed that the ~~relationship~~ of the Court to ~~legislation~~, like many other subjects treated by the Constitution, would work itself out by processes of evolution and change over long periods of years. In the same way the framers used broad and general language capable of evolution and change when they spoke about interstate commerce, the taxing power and the general welfare.

But when in the course of evolution the Court assumed an unwritten power to pass on the constitutionality of legislation by Congress and the States, the interpretation of constitutional provisions took an inevitably legalistic twist.



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involvement in war -- we face as confidently as we always face a known and measurable danger. As to that, your government knows your mind, and you know your government's mind; and there is no doubt in either mind as to just what we can and will do.

But it takes much more foresight, intelligence and patience to avoid the more subtle attack which spreading dictatorship makes upon any democracy. Whether we like it or not, the fact is that since the last war and revolution in Europe, an idea has taken root in America, as elsewhere, that the resources of the nation can be utilized to produce a far higher standard of living for the masses if government is intelligent and energetic enough to direct our economy to that end.

That idea -- or more properly that ideal -- is wholly justified. It cannot be thrust aside by those who in their hearts desire to revert to the conditions of ten years ago or even retain the conditions of today.

That ideal makes understandable the demands of labor for shorter hours and higher wages, the demands of farmers for a more stable income, the demands of the great majority of business men for relief from disruptive trade practices, the demands of all for the kind of license often misnamed "Liberty", which permits a handful of the population with vast economic power to bring about panics through speculation and the destruction of their smaller competitors.

And as dictatorships in other lands parade their pseudo-science of economic organization in/natural that in two types of minds in America, the question should arise as to whether democracy can match dictatorship. The first type belongs to those who are afraid of democracy -- the old forms of economic and social control to remain in control, and say in their hearts "If constitutional democracy threatens our control, why



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General Services
Administration
Samuel I. Rosenstein

Chairman, Select Committee on G.S.A.

should we oppose a dictatorship if thereby our control is guaranteed? The other type belongs to those who are in too much of a hurry, who want their Utopia to spring up completely [and] armed overnight and would be willing to accept some vague form of proletarian dictatorship because they are impatient of the processes of constitutional democracies,

Both [the] equally dangerous. We are engaged in a definite, and so far successful, contest against the first element that represents cold-blooded greed for the retention of power.

Equally we are against that element which represents recklessness in their desire to seize power.

Dictatorship can be avoided by yielding to neither. And it is my firm belief that the overwhelming majority of the American people understand full well that that course is the course of the present Government of the United States.

We ask ourselves, therefore, "Can our constitutional democratic form of government meet the insistence of our people that economic security and the standard of American living, be raised from what it is to levels which our resources justify?"

When we answer "yes" to that question, we shall have accomplished two great objectives -- we shall have eliminated internal doubt as to the success of our democracy and we shall have removed the belief of certain other nations that the spirit of efficiency must be dictatorship and that the spirit of aggression which dictatorship breeds is desirable for the world.

That is why I have been saying for months [and years] that there is a crisis in American affairs which demands [continued] action. It is a dangerous crisis because its external and internal difficulties reinforce each other.

Of necessity I paint a broad picture. The American people understand and approve this, because they have become weary of those who insist on the minor details instead of the broad



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purposes.]

Democratic government in this country can do all the things which common-sense people, seeing the picture as a whole, have the right to expect of it. These things can be done under the Constitution, without the surrender of a single one of the liberties it was intended to safeguard. And I am determined that under the Constitution these things shall be done.

Our Constitution can absorb the shock of existing world changes, because it has already absorbed the shock of ^{the} swift and far-reaching changes — changes in territory, in race, in industry, in agriculture, changes indeed in all of the processes of everyday life. In adapting ourselves to these changes, we have so far in a material sense exceeded every other nation. It is essential to our future that the spiritual gain keep pace with the material.]

[During the war of the Revolution the colonies, transforming themselves into states, ^{had} watched a weak emergency government almost lose the war. When peace came they suffered in the continued economic distress resulting from thirteen [newly freed] little republics without any effective national government.

Normal commerce under conflicting regulations of thirteen separate governments ^{was} impossible; the raising of revenues for the general welfare and the common defense from thirteen sovereignties, each thinking only of ^{its} own welfare and its own defense, ^{was} equally impossible. The Articles of Confederation had proved completely inadequate to protect life, liberty or property under a national conception.

The men who wrote the Constitution were the men who fought the Revolution. [They] knew how much blood and sweat and patience it takes to maintain a nation and a national government. Because of that knowledge they dared to plan a new government both strong enough and flexible enough to endure.

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The Constitution has been adequate to enable us to surpass all other nations in material adaptation to new physical inventions. It is, I am sure, equally adequate to enable us to adjust ourselves with less difficulty than any other nation to the mental and spiritual changes of new ideas.



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They drew, therefore, the kind of agreement which men make when they want to work together under it for a very long time.

I seek to stress the undoubted fact that the Constitution of the United States was a layman's document, not a lawyer's contract. It is interesting to note in passing that Madison and Morris, largely responsible for the language, were not lawyers -- and neither were Washington and Franklin, the two members of the Convention who above all others kept the convention from going on the rocks by creating ~~and~~ ^{wronging} ~~and~~ ^{used} ~~going on~~.

I stress the fact that this great layman's document was a memorandum of general principles -- completely different from the "whereas" and the "parties of the first part" and the fine print which lawyers put into leases [and contracts] and insurance policies and installment agreements.

Purposely this layman's memorandum ~~was~~ ^{is} broad and general -- yes, ^{and} even vague and ambiguous expressions ~~are~~ ^A in order to endow the national government with capacity to keep pace with conditions as they ^{will} ~~did~~ change from year to year.

That was not because the framers did not know how to be specific when they thought it wise to be specific. In no uncertain terms they forbade titles of nobility, taxes on exports, ex post facto laws, tariffs between the States. And with almost equal ^{but} ~~definiteness~~ they defined the Bill of Rights.

But when they came to the general powers of a new national government they used generality, implication and objective as intended instruments which flexible statesmanship of the future could constitutionally adapt to ^{future} time and circumstance, just as they had used explicit language to guarantee what they ~~were~~ rightly thought were eternal verities, unchangeable by time and circumstance. For example, when the



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framers came to the section setting up a Supreme Court, contrary to the belief of some Americans of this generation, they twice voted down a proposal that the Supreme Court should enjoy a veto power over legislation. As a result there is no mention of such power in our Constitution today. It is clear that a majority of the Constitutional Convention believed that this particular subject was one which would work itself out by the normal processes of evolution over long periods of years.

In the case of any other specific proposals that were voted down, the Convention clearly expressed its belief that changing conditions would bring changing interpretations as responsive the necessities of ~~xxxpaxmikhe~~ government arose through the []

The history of the last 150 years has been an unending struggle between those who would shrivel the Constitution into a lawyer's document and those who would preserve its original broad conception as a layman's instrument of government.

We as a people have had the constant task of thwarting the instinctive effort of the legal mind to read it as if it were the fine print on the back of an insurance policy.



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Next Draft with
Pres.

DRAFT B

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It is a century and a half later. The world presents a very different picture.

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of the United States. Physical contact across the oceans has been reduced from several months to a few days, and, by air, to a matter of hours. Contact by word or picture is instantaneous. Public opinion between nations no longer need be formed by letter and news sheets which are months old. In a flashing second, radio propaganda now filters across boundaries into the very homes of the people.

The world of 1937 is a single earthquake zone; a shock anywhere strikes everywhere; the slightest tremor anywhere registers on the seismograph of this generation's expectations of government. It is in this atmosphere that for over twenty years we have watched democracies replace monarchies which had failed their people and dictatorships displace democracies which had failed to function. And of late we have seen a definite world challenge to the whole democratic idea of government.

We would deceive ourselves if we sought to deny that the methods of dictatorial government have obtained for the people who live under them things they wanted but could not get under the ineffective governments that were displaced. In the nations which had previously failed to make their democracies function there has been great material improvement — compared with their former condition. Unemployment has been lessened — even though caused by production of armaments. Order prevails — even though maintained by fear. Housing conditions are better, health facilities are better, social insurance is established. These reforms have sprung from the pronouncements of one man or of a small group in complete control of the nation, rather than from a cooperative insistence on the part of the people themselves, but — they do exist.

Such indeed has been the surface success of new forms of government, whether they be called "communistic" or "dictatorial".



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or "military", that their leaders are emboldened to laugh at all constitutions, to predict the copying of their own methods, and to prophesy the early end of democracy throughout the world.

That attitude and prediction are both denied by those ~~people~~ who still believe in democracy -- that is, by the overwhelming majority of the nations of the world and by the overwhelming majority of the people of the world.

And the denial is based on two reasons eternally right.

First, men in the present development of education and civilization will not for any length of time tamely submit to one man or any group of men what purports to be the permanent conduct of their government. They will eventually insist not only on the right to choose who shall govern them but also upon the periodic reconsideration of that choice by the free exercise of the ballot.

Second, they are horrified at the state of world affairs which has been brought about by these new forms of government, and which threatens not merely personal existence but the existence of civilization itself as we know it. They see armaments piling up and deficits growing. They see trade barriers multiply and merchant ships illegally seized or sunk on the high seas. They see these new forms of government spreading fear throughout the world -- fear of aggression, fear of invasion, fear of revolution, fear of death.

And so the people of America are rightly determined to keep that growing menace from our shores.

The dangers to us from this new kind of dictatorial government are of two kinds -- one external and obvious, and one internal and insidious. The first -- the physical danger of involvement in war -- we face as confidently as we always face a known and measurable danger. As to that, your government knows your mind, and you know your government's mind; and there is no doubt in either mind as to just what we can and will do.



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But it takes much more foresight, intelligence and patience to avoid the second danger -- the more subtle attack which spreading dictatorship makes upon any democracy. Whether we like it or not, it is a fact that since the last war and revolution in Europe, an idea has taken root in America as elsewhere, that the resources of the nation can be utilized to produce a far higher standard of living for the masses if only government is intelligent and energetic enough to direct our economy to that end.

That idea -- or more properly that ideal -- is wholly justified by the facts. It, therefore, cannot be thrust aside by those who in their hearts desire-to revert to the conditions of ten years ago or even those who are satisfied to retain the conditions of today.

That ideal makes understandable the demands of labor for shorter hours and higher wages, the demands of farmers for a more stable income, the demands of the great majority of business men for relief from disruptive trade practices, the demands of all for the end of that kind of license, often misnamed "liberty", which permits a handful of the population to take far more than their tolerable share from the rest of the people.

And as dictatorships in other lands parade their pseudo-science of economic organization it is natural that in the minds of some Americans the question should arise as to whether democracy can match dictatorship, in giving this generation the things they want from government. And two types of minds in America could be particularly fertile to that suggestion.

The first type is among those who are really afraid of the majority rule of democracy -- who want the old forms of economic and social control to remain in their hands, and who say in their hearts "If constitutional democracy threatens the control which has been ours in fact, why should we oppose it?"



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- written by James M. Farley -
dictatorship which would perpetuate that control?"

The other type is among those who are in too much of a hurry, who are impatient at the processes of constitutional democracies, who want their Utopia to be assembled overnight completely equipped P.O.B., and would be willing to accept some vague form of proletarian dictatorship as the quickest way to get it.

Both types are equally dangerous. We have been engaged in a definite, and so far successful, contest against the first element that represents cold-blooded ^{revolutionary} purpose to hold power. Equally we are against that second element which represents reckless impatience to seize power.

Dictatorship can be avoided by yielding to neither. The overwhelming majority of the American people fully understand and completely approve that that course is the course of the present Government of the United States.

But to hold to that course, we must give satisfactory answer to the question: "Can our constitutional democratic form of government meet the insistence of our people that economic security and the standard of American living, be raised from what they are to levels which our resources justify?"

When we have reached a point where we can answer "yes" to that question, we shall have accomplished two great objectives -- we shall have eliminated internal doubt as to the success of our democracy and we shall have dissipated the illusion in certain other nations that the price of efficiency must be dictatorship and the spirit of aggression which dictatorship breeds.

That is why I have been saying for months that there is a crisis in American affairs which demands action now. It is a dangerous crisis because its external and internal difficulties reinforce each other.

Of necessity I paint a broad picture.

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Democratic government in this country can do all the things which common-sense people, seeing that picture-as-a-whole, have the right to expect of any government. These things can be done under the Constitution, without the surrender of a single one of the liberties it was intended to safeguard.

And I am determined that under the Constitution these things shall be done.

We know our Constitution can absorb the shock of existing world changes, because it has already absorbed the shock of other swift and far-reaching changes -- changes in territory, in race, in industry, in agriculture, changes indeed in all of the processes of everyday life. The Constitution has been adequate to enable us to surpass all other nations in material adaptation to new physical inventions. It is, I am sure, equally adequate to enable us to adjust ourselves with less difficulty than any other nation to the mental and spiritual changes of new ideas.

The men who wrote the Constitution were the men who fought the Revolution. They had watched a weak emergency government almost lose the war. When peace came, they had suffered in the continued economic distress of thirteen little republics without any effective national government. How-i commerce under the conflicting regulations of thirteen separate governments they found could not be done. The raising of revenues for the general welfare and the common defense from thirteen sovereignties, each thinking only of its own welfare and its own defense, they also-found could not be done. The Articles of Confederation of thirteen military allies had proved completely inadequate to protect life, liberty or property in a single nation at peace.

The men who wrote the Constitution, therefore, knew how much blood and sweat and patience it takes to maintain a nation and a national government. Because of that knowledge they dared



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to plan a new government, both strong enough and flexible enough to endure.

They, therefore, drew the kind of agreement which men make when they really want to work together under it for a very long time. *... for the laying the basis ...*

The Constitution of the United States was a layman's document, not a lawyer's contract. That cannot be stressed too often. It is interesting to note in passing that Madison and Morris, largely responsible for its language, were not lawyers -- nor were Washington and Franklin, who above all others kept the Convention from breaking up and going home.

This great layman's document was a memorandum of general principles -- completely different from the "whereas" and the "parties of the first part" and the fine print which lawyers put into leases and insurance policies and installment agreements.

Purposely this layman's memorandum used broad and general -- yes, even vague and ambiguous -- expressions in order to endow the national government with capacity to keep pace with conditions as they would change from year to year.

That was not because the Framers did not know how to be specific when they thought it wise to be specific. In no uncertain terms they forbade titles of nobility, taxes on exports, *ex post facto* laws, tariffs between the States. And with almost equal definiteness they detailed the Bill of Rights.

But when they came to the fundamental power of a new national government they used generality, implication and statement of objective as intentional instruments which flexible statesmanship of the future could constitutionally adapt to time and circumstance, just as they had used explicit language to guarantee what they rightly thought were eternal verities, unchangeable by time and circumstance.

For example, that purposeful vagueness dominated even



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the treatment of such an important subject as the Supreme Court. Contrary to the belief of a great many Americans of this generation, the Constitution says nothing about giving the Supreme Court a power to say that legislation is unconstitutional. Specifically the framers twice voted down a proposal to give the Supreme Court a veto over legislation. And likewise the framers were not specific about the make-up of the Supreme Court. For instance, there is no mention of the number of judges in the Constitution. Clearly a majority of the Constitutional Convention believed that the ~~given~~ plan of the Court, like many other general subjects treated by the Constitution, would work itself out by processes of evolution and change over long periods of years. In the same way the framers used broad and general language capable of ~~evolution~~ and change, when they spoke about interstate commerce, the taxing power and the general welfare.

Then in the course of evolution the Court assumed an unwritten power to pass on the constitutionality of legislation by the Congress and the States, the interpretation of constitutional provisions took an inevitably legalistic twist.

The history of the last one hundred years has been an unending struggle between those who would shrivel the Constitution into a lawyer's document and those who would preserve its original broad conception as a layman's instrument of government.

We as a people have had the constant task of thwarting the instinctive effort of the legal mind to read it as if it were the fine print on the back of an insurance policy.



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Those of us who really believe that the Constitution can be made to endure hold no rancor against those lawyers and politicians who professionally think and talk in purely legalistic phrases. But we cannot be alarmed when they cry "unconstitutional" at every effort to better the condition of our people. Such cries have always been with us, and ultimately they have always been overruled.

Lawyers distinguished in 1787 insisted that the Constitution itself was unconstitutional under the Articles of Confederation. But the ratifying conventions overruled them.

Lawyers distinguished in their day warned Washington and Hamilton that the protective tariff was unconstitutional -- warned Jefferson that the Louisiana Purchase was unconstitutional -- warned Monroe that to open up roads across the Alleghanies was unconstitutional. But the Executive and the Congress overruled them.

Lawyers distinguished in their day persuaded a divided Supreme Court that the Congress had no power to govern slavery in the territories, that the long-standing Missouri Compromise was unconstitutional. But a War Between the States overruled them.

Lawyers distinguished in their day persuaded the Odd Man on the Supreme Court that the methods of financing the Civil War were unconstitutional. But a new Odd Man overruled them.

That great Senatorial constitutional authority of his day, Senator Evarts, issued a solemn warning that the proposed Interstate Commerce Act and Federal regulation of railway rates would be unconstitutional. But both the Senate and the Supreme Court overruled him.

Less than two years ago fifty of the highest priced lawyers in the country were found to give the Nation (without cost to the Nation) a solemn and formal opinion that the



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Wagner Labor Relations Act was unconstitutional. And a few months later a national election and the Supreme Court itself overruled them.

For twenty years the Odd Man on the Supreme Court insisted that State minimum wage laws for women were unconstitutional. A few months ago, after my message to the Congress on the rejuvenation of the Judiciary, the Odd Man admitted that the Court had been wrong -- for all those twenty years -- and overruled himself.

In this constant struggle the leaders of no political party -- mine or any other -- have had a consistent or unblemished record. But the rank and file of the membership of political parties has had a consistent record. They have always approved our constitutional system with its three component branches -- the Executive, the Legislative and the Judicial. They have always demanded that all three branches be efficient -- that all three branches be honest -- that all three branches live up to the needs of the time.

The rank and file of Americans respect all branches of their government. They have seen nothing more sacred about one branch than about any other. They have had no desire to exalt any one of them -- be it the Executive, or be it the President, or the Congress or the Supreme Court -- above either of the other two.

That is why the rank and file of Americans have not been greatly disturbed by the clamor about the subordination of the Judiciary and the destruction of the Constitution which they have heard from certain sources during recent months. Despite the rushing fire engines and the triple alarms they have never believed there was any such fire as they have been told about. Instead they have sensed that there is danger of a different kind -- the refusal to bring the judicial process up to modern standards of statesmanship and efficiency. Although they knew



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that there are many sincere people who are honest in the conviction of their opposition to judicial reform, they also know that many others are clanging the bells because it is to the advantage of themselves and the interests they represent that judicial reform shall not be made. True, even some of these give lip service to judicial reform with the purposeful reservation that it should be attempted by methods which could not accomplish the result during their lifetime.

But the rank and file can take courage from the fact that every effort to construe the Constitution as a lawyer's document rather than a layman's charter has ultimately failed. Whenever legalistic interpretation has clashed with contemporary sense on great questions of broad national policy, ultimately the people have had their way -- ultimately the Constitution has been found to be on the side of the Congress in its expression and consummation of the public will.

Let us remember, however, that that word "ultimately" has often meant a period of waiting far longer than the Nation could afford. We have time and again paid a terrible cost for unconscionable delay.

It cost a Civil War to gain recognition of the constitutional power of the Congress to legislate for the territories.

It cost twenty years of taxation on those least able to pay to recognize the constitutional power of the States to pass minimum wage laws for their protection.

For twenty years we have had to tolerate -- and no one knows how much longer we shall have to tolerate -- a constitutional interpretation that forbids us to regulate the shipment of goods sweated from the labor of little children or produced under other conditions that affront the public conscience.

Of course we know that it takes time to adjust government to the needs of society. But on the other hand, if wise reform



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is delayed too long, resentment and injustice accumulate to make wise reform impossible and unreasonable change inevitable. Yes, time is vital in statesmanship and in government -- in all three branches of it. Modern history proves that reforms too long delayed or denied have jeopardized peace, undermined democracy and swept away civil and religious liberties. We can no longer afford the luxury of twenty-year lags. ~~Mainly history proves that reforms too long delayed~~

You will find no justification in any language that the framers used in the Constitution, for delay in the reforms which the mass of the American people now demand. You laymen for whom and by whom the Constitution was written -- look into that simply-worded document which I hope is in your hands tonight. Read it in the light of the history of its beginnings and in the light of its expressed purposes — to form a more perfect Union and to promote the general welfare.

See if you can find anything in the Constitution which says that the government of a united nation cannot help to stabilize agriculture; cannot provide old-age security for the vast army of railway employees; cannot help reorganize the sick coal industry; cannot regulate the nationwide network of public utility holding companies; cannot apply every resource of science to the development of a great interstate region like the Tennessee Valley; cannot prohibit the transportation in national commerce of the products of child labor, underpaid labor, or overworked labor.

Yet every one of these advances has been jeopardized or actually forbidden by those who have sought to read into the Constitution language which the framers refused to write into the Constitution.

And it is a sad commentary that those who would thus inject into the Constitution private ideas of social and economic policy contrary to the ideas of most Americans should invoke of



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all things -- the Bill of Rights.

No one cherishes more deeply than I the civil liberties achieved by so much blood and anguish through the many centuries of Anglo-American history. Indeed I go further than the framers of the Constitution: I insist that the Bill of Rights should be observed in the letter and the spirit not only by the Federal Government, the State governments and the local governments, but also by those in private places who have power over other men's lives. And the Federal Government of today does observe those rights in letter and in spirit.

Does anyone dare assert today that the Federal Government interferes with his right to worship God as he pleases?

Does anyone dare assert that the Federal Government today interferes with the freedom of speech or the freedom of the press? In all your life, can you remember a time when the press was as free as it is today in the exercise of what, to be polite, we call "criticism"?

Everyone knows that the simple spiritual liberties guaranteed by the framers are not the cause of all the talk about minority rights today. Nor are minorities who are sincerely interested in these simple democratic rights the ones who assert a privilege to check progress. Instead, the materialistic obstructionists are coming from minorities of power over others who boldly demand a constitutional right to the perpetuation of that power.

The constitutional guarantees of civil and religious liberties were intended to preserve all that was spiritually fine in the tradition that is America. They were not designed to protect materially-minded minorities in the destruction of the essence of democracy in America.

And what is the complaint of these materialistic minorities? They complain of taxes. They complain of regulation of business. True, we have taxed the minority best able to pay at a rate higher than the majority less able to pay. But there was never anything in the Bill of Rights to forbid that. The



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Constitution expressly provides for it.

True, we have closed the door to minorities who know shrewd and socially dangerous ways of making easy money at the expense of the majority. But no Bill of Rights was ever intended to prevent the government from doing that.

To put the situation in its simplest terms, the present government of the United States in at least two of its branches has never taken away and will never take away any liberty from any minority, unless it be a minority which so abuses its liberty as to do positive and definite harm to its neighbors constituting the majority.

And the government of the United States will continue to remember also the fact that the Bill of Rights was put into the Constitution in the first instance not only to protect minorities against majorities but also to protect majorities from the over-weening acts of minorities.

Those of us who are most deeply sincere in the protection of minorities against intolerance and arbitrary power appreciate the danger to minorities which would come if government were unable to bring about conditions under which the great mass of our people would have social justice and economic security. The best protection of the individual and of minorities is the maintenance of the Bill of Rights through a spirit of tolerance and a feeling for fair play in the national character.

In other lands civil and religious liberties of free government have been surrendered because government did not provide a system in which men and women by their own efforts could find food, shelter, security and dignity. Desperate people surrendered their liberties because freedom had come to mean only humiliation and little to eat. We Americans need to revert only to the crisis of 1933 to appreciate that.

On this solemn anniversary I ask that the American people rejoice in the spirit of their Constitution.



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I ask that they guarantee the effectiveness of all its parts by living by the Constitution as a whole.

I ask that they give their reality to the Constitution itself rather than to those who would misinterpret it.

I ask that they have faith in its enduring ultimate capacity to work out the problems of democracy today, but that they help make the Constitution work now rather than twenty years from now.

I ask that majorities and minorities subordinate the personal license of both to the common good of all.

I ask that they exalt the broad purposes of the Constitution expressed in terms of truth and tolerance rather than the narrow view expressed in terms of obstructive legalisms.

For us the Constitution is a tie that binds, a bond without bitterness that makes us "we the people of the United States."

So we revere it -- not because it is old but because it is ever new, not in the spirit of the past alone but in the spirit of faith in those who now live by it, and in the spirit of hope for the security of the generations to come.



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FOURTH DRAFT

Draft
Done by T. G. C. + Me at
Blue Mountain Lake

9/6/37 - 9/11/37

Tonight, 150 years ago, thirty-eight weary delegates to the Constitutional Convention at Philadelphia signed the Constitution of the United States.

A third of those who had originally gathered, embittered by legalistic and sectional differences, had given up and had gone home. The moral force of Washington and Franklin -- men experienced in the flexible give-and-take of life -- kept the rest together. Those remained who cared the most; and caring most, dared most.

What they signed was simply two handwritten sheets of parchment. But these two sheets of parchment were enough to state the terms on which thirteen independent weak little republics agreed to try to survive together as one strong nation. And upon those terms thirteen little seaboard republics of three million colonists have succeeded in becoming one great nation of 130 million Americans.

In that growth we have absorbed the shock of fundamental changes swifter and more far-reaching than have come to any other people -- changes in territory, changes in race, changes from little business to big business, changes due to the unparalleled eagerness and thoroughness with which we bring the advances of science into our everyday life.

To hold us together through those changes we have had none of the natural bonds of other nations. But from each change we have been able to emerge more one nation than before. We are of many races, many religions, many cultures and many pasts; but a freeman's covenant keeps us one. For us, the Constitution is the tie that binds, the bond that makes us "we".

And so we revere it, not merely because it is old like something dug from ancient Egypt, but because it is ever new; not in a spirit of ancestor worship but in a spirit of respect for those who now live together by it and of hope for the security of generations to come.



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What gave us the good fortune of its far-seeing political wisdom was not magic -- not even accident -- but an unparalleled experience in statesmanship by a whole generation.

The men who wrote the Constitution were the men who fought the Revolution. To them grave responsibility came in the open-minded courage of youth when they still were supple and ran easily in harness with the thoughts of others. Their average age was only ____ years.

But for at least twenty-five years before, the primary concern of Colonial America had been to find a way to combine what the Colonists insisted were constitutional liberties with effective government that could get things done.

And young as they were, these men had agitated, had called strikes like the Boston Tea Party, and had finally gone to war for the constitutional rights of English colonists to be free from exploitation by absentee overlords.

And young as they were, after the war for freedom was won and the Tories had emigrated leaving them the burdens of government, they came to learn by personal experience that the freedom they thought they had won required more than the removal of a foreign government.

They learned that liberty without security was illusory. They learned that security of any kind was impossible except under a strong, effective, national government of their own. Desperately they had watched a weak emergency government almost lose the war. Personally they had suffered in the continued economic distress in the newly-freed little republics. Even as the Convention met in Philadelphia, Shay's Rebellion fired by the misery of farmers was just burning out in Massachusetts.

They had tried to carry on normal commerce under the conflicting regulations of thirteen governments and they knew it could not be done. They had tried to raise revenues for the general welfare and the common defense from thirteen sovereignties, each thinking only of its own defense and its own welfare,



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and they knew it could not be done. The Articles of Confederation, barely adequate to achieve independence, had proved completely inadequate to protect life, liberty or property over the changing years of peace.

And so the framers knew, as few people today do know, just how much blood and sweat and patience it takes to create and maintain a nation and its government. Because of that knowledge they ~~desired~~ to plan a new government both strong enough and flexible enough to endure. What they arrived at was nothing less than a scheme of national organization "framed" as Chief Justice Marshall expressed it "for ages to come" and "designed to approach immortality as nearly as human institutions can approach it."

Therefore, they drew the kind of agreement which men make when all sides want to be sure that they can work together under it for a long time.

As lawyers would say, it was a layman's document -- a memorandum of general principles -- completely different from the "wherases" and "parties of the first part" and fine print which lawyers put into leases and insurance policies and installment contracts.

Purposely this layman's memorandum used broad and general and, if you please, even vague and ambiguous expressions to endow government with capacity to keep pace with conditions as they change.

That was not because the framers did not know how to be specific when they thought it was wise to be specific. In no uncertain terms they forbade titles of nobility and attainder of blood. And almost as particularly they defined the Bill of Rights.

But when they came to the great affirmative powers of the new national government, they used generality and silence as conscious instruments which flexible statesmanship of the future might adapt to time and circumstance just as they had used explicit language to guarantee the observance of what they thought were eternal verities, unchangeable by time and circumstance.



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Whenever we have read the language of the Constitution with the attitude of these lay statesmen, we have found it adequate to deal with the successive problems of government created by the steamboat, the railroad, the telegraph, the telephone, the pipeline, the airplane, the radio, the new devices of corporate and financial control.

But in order to read the Constitution that way we have constantly had to beat off the instinctive effort of the legal mind to read it as if it were the fine print on the back of an insurance policy -- and to read into it limitations and qualifications which the Founding Fathers refused to write into it.

The history of the last 150 years of the Constitution has been an unending struggle between those who would shrivel the Constitution into a lawyer's document and those who would preserve its original conception as an instrument of government -- as a means of founding and developing a great nation.

The fact that today there can be found distinguished lawyers to cry "unconstitutional" is nothing to be alarmed at; such cries are a normal part of the growing pains of the nation. They have always been with us.

Distinguished lawyers were found to insist that the Constitution would not be safe unless it gave the Supreme Court a general power of veto over all Acts of Congress. But the Constitutional Convention overruled them.

Distinguished lawyers were found to insist that the Constitution itself was unconstitutional under the Articles of Confederation. But the ratifying Conventions overruled them.

Distinguished lawyers were found to warn Washington and Hamilton that the protective tariff was unconstitutional -- to warn Jefferson that the Louisiana Purchase was unconstitutional -- to warn Monroe that to open up roads to the West was unconstitutional. But the Executive and the Congress overruled them.

Distinguished lawyers were found to persuade a divided Supreme Court that Congress had no power to govern slavery in the territories, that the long-standing Missouri Compromise was



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unconstitutional. But the War Between the States overruled them.

Distinguished lawyers were found to persuade the Odd Man on the Supreme Court that the methods of financing the Civil War were unconstitutional. But a new Odd Man overruled them.

The great constitutional authority in the United States Senate of his day, Senator Evarts, was found to give solemn warning to that body that the proposed Interstate Commerce Act and Federal regulation of railroad rates would be unconstitutional. But both the Senate and the Court overruled him.

Less than two years ago fifty of the highest paid lawyers in the country were found to give the Nation, without charge (to the Nation) a solemn and formal opinion that the Wagner Labor Relations Act was unconstitutional. And a few months later, a national election as well as the Court overruled them.

For twenty years the Odd Man on the Supreme Court insisted that state minimum wage laws for women were unconstitutional. Six months ago, after my message to the Congress on the rejuvenation of the Judiciary, the Odd man admitted that the Court had been wrong -- for all the twenty years -- and overruled himself.

In this constant struggle no political party -- mine or any other -- has had an unblemished record.

But you and I can take courage from the fact that every effort to read a charter designed for the unfolding of our national life as if it were the fine type on the back of an insurance policy, has ultimately failed.

Whenever legalistic interpretation of the Constitution has clashed with the contemporary sense and understanding of the people on great questions of broad national policy, ultimately the people have had their way. Whenever the Congress, expressing the public will has clashed with the Supreme Court on questions of great national legislative policy, ultimately the Constitution has been found to be on the side of the Congress.

Once that vindication has had to come by war. Usually it comes by frank or covert reversal of decision. Only during this



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year, for instance, there have been striking examples of that usual type of vindication of the Constitution as a statesman's document in the decisions of the Supreme Court upholding State minimum wage laws for women, the Wagner Labor Relations Act and the Social Security Act. Each of those decisions was a reversal of previous decisions rendered by the same Court within a year.

"Only once in 150 years has a decision of the Supreme Court against an Act of Congress been reversed by Constitutional Amendment. If the conduct of presidents and congresses is any guide, if experience is any guide, then it is not correct to say that the 'natural,' 'right,' 'normal,' or 'democratic' way of overcoming an adverse decision by the Court is to resort to a constitutional amendment. Where reversal has been deemed right and proper by Congress and the President, other methods have been chosen, except in one single case, ever since the Constitution was adopted.

"The exception was the Income Tax decision of the Court in 1895. In that case the Court declared the Income Tax Law of 1894 to be unconstitutional, although it had previously declared such a tax to be constitutional. I immediately a storm of criticism broke over the action of the Court. Several years later, members of Congress, including Senator Borah, proposed to enact a new Income Tax Law in spite of the adverse decision of the Court, and to resubmit the issue to the Court with a tacit invitation to reverse itself again. This proposal was staved off, mainly under the leadership of men who did not want an income tax at all, and a constitutional amendment was submitted to the country. It was ratified in 1913, that is eighteen years after the Supreme Court declared the law of 1894 null and void. This is the only case in 150 yearsⁱⁿ which a decision of the Court against Congress has been reversed by resort to a constitutional amendment."

There is no mistake about these facts. I have just been quoting from the writings of the foremost authority on American



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constitutional history -- Charles M. Beard.

Let me read further what he says: "It seems to me in accord with the facts, therefore, to say that the normal way to overcome adverse decisions against Congress is not to resort to an amendment, to tinker with the Constitution, every time a case arises. The American way in general practice is to use other means -- that is, to change the number of judges, to appoint the right kind of judges, and to resubmit ~~sixty~~ issues to the Court for reconsideration. No way is absolutely secure, but certainly the adoption of an amendment is no guarantee that public purposes will be realized, for the Supreme Court may riddle the new amendment by adverse decisions as soon as Congress acts under it. A good example is the judicial defiance of the plain and express words of the Income-Tax Amendment, adopted after eighteen long years of agitation and discussion."

Tonight as we celebrate the signing of the Constitution, we may rejoice that the recent decisions of the Court have temporarily vindicated it as a statesman's rather than as a lawyer's document. But that triumph is never permanently assured. And in these days, particularly, when the undemocratic concentration of economic power has brought with a corresponding concentration of legal ability for hire against the democratic purposes of the Constitution, only the utmost vigilance and the utmost willingness to fight will guarantee the continuance of our statesman's heritage. The misinterpretation of the Constitution is an enemy fortress which a democracy on the march simply cannot afford to leave untaken on its flank or in its rear.

Furthermore, a democracy cannot help counting the terrible cost of vindication, and asking "Why?"

Why did we have to have a Civil War to recognise the constitutional power of Congress to legislate for the territories?

Why did we have to have twenty years of taxation upon those least able to pay to recognise the constitutional power of the Congress to levy taxes upon those most able to pay?

Why did we have to have twenty years of exploitation of



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women's labor to recognize the constitutional power of the States to pass minimum wage laws for their protection?

Why have we had to tolerate for twenty years, and why do we still have to tolerate, a constitutional interpretation which forbids us to regulate the nation-wide shipment of goods sweat-ed from the labor of little children, or produced under any other conditions which affront the public conscience?

We know that it takes time to adjust our government to the needs of society and that deliberation about the remedy is indispensable to wise reform. But if wise reform is delayed too long, resentments, grievances and injustices accumulate to such a degree that wise reform is rendered impossible, and unreasonable and forcible measures come to prevail. Time is vital in statesmanship; and orderly reforms, too long delayed or denied, have too often in modern history jeopardized peace, undermined democracy and swept away civil and religious liberties.

You will find no justification in any language that the Fathers used in the Constitution for delay in the reforms which the mass of the American people now demand. You laymen for whom and by whom the Constitution was written -- look into that simply-worded document which I hope is in your hands tonight. Read it in the light of the history of its beginnings and in the light of its expressed purpose -- to form a more perfect Union and promote the general welfare.

See if you can find anything in it which says that the Government of a united nation cannot help the one-third of its population engaged in nation-wide agriculture to stabilize their industry, maintain fair prices and purchasing power, and contribute their full share to a nation-wide economy.



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See if you can find anything in it which says that the government of a united nation cannot require a system of old-age security for the vast army of railway employees on whose vigilance and well-being rests the safety of everything and everyone moving on the great nation-wide railway systems.

See if you can find anything in it which says that the government of a united nation cannot help to reorganize the sick coal industry which operates in _____ states of the Union and provides nation-wide motive power for industry and transportation.

See if you can find anything in it which says that the government of a united nation cannot regulate the great interstate nation-wide network of public utility holding companies which have admittedly proved beyond State regulation and whose machinations have becavilled our politics for a generation.

See if you can find anything in it which says that the government of a united nation cannot apply every resource of science to the development of a great natural interstate region, like the Tennessee River Valley, improve its water transportation, and its floods, conserve and develop its natural resources, and demonstrate the potentialities of electricity, that greatest servant of democracy.

See if you can find anything in it which says that the government of a united nation cannot prohibit the transportation in national commerce of the products of child labor, underpaid labor, overworked labor.

See if you can find anything in it which says that the government of a united nation cannot help nation-wide business and industry to place competition between them on decent standards including the minimum wages they pay and the maximum hours of their workers.



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But those are some of the efforts of democracy which today are jeopardized or actually forbidden, not because of anything the Constitution says, but because men without a proper conception of its incomparable greatness have chosen to read into what it does not say their private notions of economic policy.

Consistently throughout the last twenty-five years, however, those who have had an economic advantage in blocking such social advances of progressive government, have appealed from the Congress and the State Legislatures to the Courts to protect that advantage, invoking -- of all things -- the Bill of Rights.

It may seem unbelievable now -- but until last Spring, for instance, they had argued successfully before the Supreme Court that State Legislatures interfered with the civil liberty of women to work if the States insisted that women be paid a living wage.

And until last Spring, they had argued successfully before the Supreme Court that it interferes with the civil liberty of an employer to refuse him the right to discharge employees who join unions, while at the same time they assume the right to conduct systematic espionage to root out such workers -- espionage as outrageous in essence as any search and seizure forbidden to government.

No one cherishes more deeply than I the civil liberties achieved by so much blood and anguish through the many centuries of Anglo-American history. No one is more jealous that the safeguards the framers wrote into the Constitution be scrupulously observed not only in the letter but in the spirit -- not only by government but by those who have power over other men's lives more immediate than that of government. And never while I can prevent or protest, will my attempt to violate these liberties pass unnoticed by me.



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But it is high time that we face frankly the audacious modern perversion of the language of the Bill of Rights.

Freedom of religion, freedom of speech, freedom from unreasonable searches and seizures and the right to a fair trial of the humblest accused -- these are the kind of simple democratic rights which the Founding Fathers guaranteed for the future as eternal verities.

Do you know anyone who dares assert that the Federal Government of today interferes with his right to worship God as he pleases?

Do you know anyone who dares assert that the Federal Government of today interferes with his right to speak his mind on any subject? Can you remember a Press which was ever freer to criticize government -- and more freely indulged its freedom?

Do you know anyone who dares assert that the Federal Government of today has without warrant or unreasonable cause invaded the privacy of "his person, his house, his papers and effects"?

Do you know anyone who dares assert that the Federal Government of today has denied him a fair trial in a Federal Court?

Do you know anyone who dares assert that the Federal Government of today has taken any of his property from him without due process of law? Do you know of any property taken for a public purpose -- a post office, a Federal park, a Federal road -- a National Forest, without a fair purchase price arrived at or a fair condemnation award paid? There are some, I know, who will say that the Federal Government has taken their property without due process by the imposition of taxes or by denying to them for the future certain opportunities to make money they have had in the past.



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Of course we have taxed the minority best able to pay at a rate higher than the majority less able to pay. But there never was anything in the Bill of Rights to forbid that. Lawful taxation was never confiscation; and the Constitution expressly provides for taxation according to ability to pay.

Of course we have closed the door to minorities who in the past had known shrewd ways to make easy money at the expense of the majority of common folk. But the eternal verities of the Bill of Rights were never intended to prevent government from doing that.

No one who really believes in the Constitution will accept the thesis that the spiritual protection of minorities against the arbitrary, intolerant majorities requires the enthronement of minorities of privilege over the majority of common men. The constitutional guarantees of civil and religious liberties were intended to preserve all that was spiritually fine in the tradition that is America. They were not designed to protect materially-minded, anti-social minorities in a reckless destruction of the essence of democracy in America.

The eternal verities of the Bill of Rights do not include a right of minority securities speculators to defraud unsuspecting investors.

The eternal verities do not include a right of minority unscrupulous bankers to misuse other people's money.

The eternal verities do not include a right of minority holding company operators to exploit the public.

The eternal verities do not include the right of minority large employers to prevent workers from organizing to bargain collectively; the right to deny workers wages and hours which will give the whole nation a chance to work and the benefit of their increased purchasing power.

The very reason and the only reason why the Bill of Rights



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was written into the Constitution was because the conventions called to ratify it were fearful that without a formal Bill of Rights, it would give the wealthy and the well-born the power to take away the hard-won liberties of the common man.

That is the very power that legal casuistry is seeking to create today by torturing the language of that same Bill of Rights. But I know that the people will not be fooled by the unscrupulous efforts of some so-called leaders of religious and racial minority groups who seek to pass off as inextricably bound up with each other the protection of civil and religious liberties and the protection of the rapacity of an economic and financial oligarchy.

I have often wondered whether those interested in the realistic protection of minorities against intolerance and arbitrary power, appreciate the danger to minorities which would come from the paralysis of government if these attempted perversions of the Bill of Rights were successful. The real and permanent protection of the individual and of minorities is tolerance and a feeling for fair play in the national character. Only in small part do tolerance and fair play rest upon legal sanction. And they will disappear here as elsewhere in this generation, if government cannot succeed in creating conditions under which the great mass of people feel convinced that they have social justice, economic security and ample scope for human dignity.

In other lands the civil and religious liberties of free government have been surrendered because government could not provide an economic system in which men by their own efforts could find food, shelter, security and dignity. Free business and free agriculture could not survive, because government could not give them the help they needed to meet new problems with new answers. Desperate people at last were willing to



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surrender their civil and religious liberties to anyone who could order the economic system ruthlessly enough to give them the illusion of living. Freedom meant only humiliation and little to eat.

We have been engaged here in a great struggle to make our democratic form of government function in collaboration with private enterprise. Together they can provide protection and security for the average man and woman.

So long as our democracy succeeds in that task, no one need fear for his civil and religious liberties -- whether those liberties are written into a document or whether they exist only in the sensitive and courageous hearts of a freedom-loving people.

But let that task fail, let hunger and suffering and indignity go on without remedy or relief, and personal liberties will never be safe merely because they are printed in the organic law of a government which has failed to govern.

If the economic crisis of 1933 had not been met by the responsible use of affirmative powers available through the Constitution, the practical position of minority groups today might well be as unhappy as it is in some other lands.

Tolerance and concern for fair play are virtues which do not flourish in the stony soil of economic want and social distress. They are flowers that grow only when nurtured by a fertile soil and a warm sun.

In today's world of aggression and of sudden economic disruptions imperfectly understood, those who are really interested in the protection of minorities cannot afford the luxury of illusions.

The Bill of Rights is, of course, precious to all of us. The reserved powers of the States to deal with matters of purely



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local concern are equally precious. But the great affirmative grants of power to a strong national government democratically responsible to all of the people, are no less precious. For without such a national government, civil and liberty and states' rights would have scant chance of survival in the modern world. The only way to guarantee the effectiveness of any of its parts is to live by the Constitution as a whole.

But the great mass of the American people have lost neither their courage nor their common sense. They give their fealty to the Constitution itself rather than to those who would misinterpret it. They have faith in its enduring capacity to work out the problems of democracy today, as it did one hundred and fifty or fifty years ago.

Those of us who really believe that the cure for the ills of democracy is more democracy, will stand by the whole Constitution, as an instrument intentionally sufficient to carry out the will of the majority. Where minorities would thwart that will for anti-social purposes of their own, they must give way by the very covenant implicit in democratic government. But where their civil rights and personal beliefs as individuals do not conflict with the common good, the true democracy of the majorities of the American people will guarantee them protection and security with all the resources of this freest government of free men.



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INSET A

The world of 1787 provided a perfect opportunity for the organization of a new form of government thousands of miles removed from influences hostile to it. With the unity provided by the Constitution we could lose our newly-won independence only through the improbable chance of an attack by a European coalition. How we then governed ourselves did not greatly concern Europe. Except as it affected our foreign trade, what occurred in Europe did not greatly affect us.

It is a century and a half later. The world presents a very different picture.

Today what we do here has an enormous and immediate effect not only on the nations of Europe but also on the many other nations in the Americas and in the Far East. And in the same way, whether we like it or not, what goes on in the other nations has an enormous and immediate effect upon every citizen of the United States. Physical contact across the oceans has been reduced from several months to a few days, and, by air, to a matter of hours. Contact by word or picture is instantaneous. Public opinion between nations no longer need be formed by letters and news sheets which are months old. In a flashing second, radio propaganda now filters across boundaries into the very homes of the people.

The world of 1937 is a single earthquake zone; a shock anywhere strikes everywhere; the slightest tremor anywhere registers on the seismograph of this generation's expectations of government. It is in this atmosphere that over twenty years we have watched democracies replace monarchies which had failed their people. And of late we have seen a definite world challenge to the whole democratic idea of government.

We would deceive ourselves to deny that the methods of dictatorial government have brought the people who live under



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things they wanted and could not get under the ineffective governments that were displaced. ~~to~~ of the ~~winner~~ democracies of the world must concede frankly that there has been great material improvement in the nations which had previously failed to make their democracies function -- compared with former ~~poor~~ condition. Unemployment has been greatly lessened -- even though the cause is production of armaments. Law and order prevail -- even though they are maintained by fear. Housing conditions are better, health facilities are better, social insurance is established. These reforms have sprung from the pronouncements of one man or of a small group in complete control of the nation, rather than from a cooperative insistence on the part of the people themselves, but -- they do exist.

Such indeed has been the surface success of new forms of government, whether they be called "communistic" or "dictatorial" or "military", that their leaders are emboldened to prophesy the early end of democracy, to laugh at all constitutions, and to predict the copying of their own methods by all the other nations of the world.

That attitude, that prediction is rightly denied by the people of every nation who still believe in democracy -- that is, by the overwhelming majority of the total of the nations of the world and by the overwhelming majority of the population of the world.

And the denial is based on two reasons eternally right.

First, men in the present development of education and civilization will not for any length of time tamely turn over to one man or any group of men what purports to be the permanent conduct of their governing. They insist on the right to choose who shall govern them and the periodic expression of that right by the free exercise of the ballot.

Second, they are horrified to see the state of world affairs



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which has been brought about by these new forms of government and which threatens not merely personal existence but the existence of civilization itself as we know it. They see armaments piling up and deficits growing. They see trade barriers multiply and merchant ships illegally seized or sunk on the high seas. They see these new forms of government spreading fear throughout the world -- fear of aggression, fear of invasion, fear of revolution, fear of death.

And so the people of America are rightly determined to keep that growing menace from our shores.

The dangers to us from this new kind of dictatorial government are of two kinds -- one external and obvious and one internal and insidious. The first -- the physical danger of involvement in war -- we face as confidently as we always face a known and measurable danger. As to that, your government knows your mind, and you know your government's mind; and there is no doubt in either mind as to just what we can and will do.

But it takes much more foresight, intelligence and patience to avoid the more subtle attack which spreading dictatorship makes upon any democracy. Whether we like it or not, the fact is that since the last war and revolution in Europe, an idea has taken root in America, as elsewhere--that the resources of the nation can be utilized to produce a far higher standard of living for the masses if government is only intelligent and energetic enough to direct our economy to that end.

The understandable demands of labor for shorter hours and higher wages, the understandable demands of farmers for a more stable income even at the price of a subsidy, the understandable demands of business men for relief from disruptive trade practices -- all these are separate present-day symptoms of that same underlying conviction.

And as dictatorships parade their pseudo-science of



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FEBRUARY 1941

Constitution Day Speech
FDR. Washington 4/1/07

Worked on by Corcoran and me in
Blue Mountain Lake, Hyde Park, a
week before Washington & May.

real draft by FDR
in Washington —
Some writing work
by TGC some
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y delegates to a Con- (TGC in
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A third or new program was
set up and gone home.

The moral force of Washington and Franklin kept the rest together.

Those remained who cared the most; and caring most, dared most.

Final — Two handwritten sheets of parchment were enough to state the

terms on which thirteen independent weak little republics agreed to
try to survive together as one strong nation.

The world of 1787 provided a perfect opportunity for the organization of a new form of government thousands of miles removed from influences hostile to it. How we then governed ourselves did not greatly concern Europe. And what occurred in Europe did not immediately affect us.

Today the picture is very different.

Now what we do has enormous immediate effect not only among the nations of Europe but also among those of the Americas and the Far East, and what in any part of the world they do just as surely and quickly affects us.

In such an atmosphere our generation has watched democracies replace monarchies which had failed their people and dictatorships displace democracies which had failed to function. And of late we have

11

Final draft by 702
in Washington -
Some writing work
by TG C + me
and placed
(TG C in
Wash.)

DRAFT II

Tonight, 150 years ago, thirty-eight weary delegates to a Convention in Philadelphia signed the Constitution.

A third of the original delegates had given up and gone home.

The moral force of Washington and Franklin kept the rest together.

Those remained who cared the most; and caring most, dared most.

Two handwritten sheets of parchment were enough to state the terms on which thirteen independent weak little republics agreed to try to survive together as one strong nation.

The world of 1787 provided a perfect opportunity for the organisation of a new form of government thousands of miles removed from influences hostile to it. How we then governed ourselves did not greatly concern Europe. And what occurred in Europe did not immediately affect us.

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Frank Clegg
from a definite world challenge to the democratic idea of representative government.

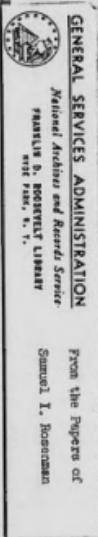
We do not deny that the methods of the challengers — whether they be called "communistic" or "dictatorial" or "military" — have obtained for many who live under them material things they did not obtain under democracies which they had failed to make function. Unemployment has been lessened — even though the cause is a mad manufacturing of armaments. Order prevails — even though maintained by fear, at the expense of liberty and individual rights.

So their leaders laugh at all constitutions, predict the copying of their own methods, and prophesy the early end of democracy throughout the world.

Both that attitude and that prediction are denied by those of us who still believe in democracy — that is, by the overwhelming majority of the nations of the world and by the overwhelming majority of the people of the world.

And the denial is based on two reasons eternally right.

The first reason is that modern men and women will not tamely submit to one man or one group ~~what supports~~ to be the permanent conduct of their government. Eventually they will insist not only on the right to choose who shall govern them but also upon the periodic reconsideration of that choice by the free exercise of the ballot.



And the second reason is that the state of world affairs brought about by those new forms of government threatens civilization. Armaments and deficits pile up together. Trade barriers multiply and merchant ships are illegally seized or sunk on the high seas. Fear spreads throughout the world — fear of aggression, fear of invasion, fear of revolution, fear of death.

The people of America are rightly determined to keep that growing menace from our shores.

The known and measurable danger of becoming involved in war we face confidently. As to that, your government knows your mind, and you know your government's mind.

But it takes even more foresight, intelligence and patience to meet the subtle attack which spreading dictatorship makes upon the morale of a democracy.

In our generation, a new idea has come to dominate thought about government — the idea that the resources of the nation can be made to produce a far higher standard of living for the masses if only government is intelligent and energetic in giving the right direction to economic life.

That idea — or more properly that ideal — is wholly justified by the facts. It cannot be thrust aside by those who want to go back



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to the conditions of ten years ago or even preserve the conditions of today. It puts all forms of government to proof.

[That ideal makes understandable the demands of labor for shorter hours and higher wages, the demands of farmers for a more stable income, the demands of the great majority of business men for relief from disruptive trade practices, the demands of all for the end of that kind of license, often misnamed "liberty", which permits a handful of the population to take far more than their tolerable share from the rest of the people.]

And as other forms of government in other lands parade their pseudo-science of economic organization, even some of our own people may wonder whether democracy can match dictatorship in giving this generation the things they want from government.

We have those who really fear the majority rule of democracy, who want old forms of economic and social control to remain in a few hands. They say in their hearts: "If constitutional democracy continues to threaten our control why should we be against a plutocratic dictatorship which would perpetuate our control?".

And we have those who are in too much of a hurry, who are impatient at the processes of constitutional democracies, who want Utopia overnight and are not sure that some vague form of proletarian



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From the Future 11

dictatorship is not the quickest road to it.

Both types are equally dangerous. One represents cold-blooded resolve to hold power. We have engaged in a definite, and so far successful, contest against that. The other represents a reckless and unscrupulous attempt to hold power, with the intent to subvert our institutions. Finally we are against that.

...and the overwhelming majority of the American people fully understand and consistently oppose ~~the~~^{the} ~~policy~~^{of} ~~the~~^{the} ~~United States~~^{United States} in its conduct of foreign policy - and a policy particularly

Government must meet the insistence of the great mass of our people that economic and social security and the standard of American living be raised from what they are to levels which the people know our resources justify.

Only by succeeding in that can we ensure against internal doubt as to the worthlessness of our democracy and dissipate the illusion that the necessary price of efficiency is dictatorship with its attendant spirit of aggression.

That is why I have been saying for months that there is a crisis in American affairs which demands action now — and a crisis particularly dangerous because its external and internal difficulties reinforce each other.

Personally I paint a broad picture. For only if the problem is seen in perspective can we see its solution in perspective.

I am not a pessimist. I believe that democratic government in this country can do all the things which common-sense people, seeing that picture as a whole, have the right to expect. I believe that these things can be done under the Constitution, without the surrender of a single one of the civil and religious liberties it was intended to safeguard.

And I am determined that under the Constitution these things shall be done.

The men who wrote the Constitution were the men who fought the Revolution. They had watched a weak emergency government almost lose the war and continue economic distress among thirteen little republics — at peace but without effective national government.

So when these men planned a new government, they drew the kind of agreement which men make when they really want to work together under it for a very long time.

For the youngest of nations they drew what is today the oldest written instrument under which men have continuously lived together as a nation.

The Constitution of the United States was a layman's document, not a lawyer's contract. That cannot be stressed too often. Madison,



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most responsible for it, was not a lawyer — nor was Washington or Franklin, whose sense of the give-and-take of life had kept the Convention together.

This great laymen's document was a charter of general principles — completely different from the "whereas" and the "parties of the first part" and the fine print which lawyers put into leases and insurance policies and installment agreements.

When the Framers were dealing with what they rightly considered eternal verities, unchangeable by time and circumstance, they used specific language. In no uncertain terms, for instance, they forbade the suspension of habeas corpus, the importation of slaves, titles of nobility, taxes on exports and tariffs between the States.

With almost equal definiteness they detailed the Bill of Rights.

But when they considered the fundamental powers of the new national government they used generality, implication and statement of mere objectives, as intentional phrases which flexible statesmanship of the future, within the Constitution, could adapt to time and circumstance. For instance, the Framers used broad and general language capable of meeting evolution and change when they referred to commerce between the States, the taxing power and the general welfare.

Even the Supreme Court was treated with that purposeful lack of specification. Contrary to the belief of many Americans, the Constitution says nothing about any power of the Court to declare legislation



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From the Papers of

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unconstitutional. Nor does it mention the number of judges for the Court. Astorally, the Convention twice voted down a proposal to give the Court a veto over legislation. Clearly a majority of the delegates believed that the relation of the Court to the Congress and the Executive, like the other subjects treated in general terms, would work itself out by evolution and change over the years.

J. J. A.

But ~~already~~ one hundred years have seen an unending struggle between those who would preserve this original broad concept of the Constitution as a layman's instrument of government and those who would shrivel the Constitution into a lawyer's contract.

Those of us who really believe in the enduring wisdom of the Constitution hold no rancor against those who professionally or politically talk and think in purely legalistic phrases. We cannot seriously be alarmed when they cry "unconstitutional" at every effort to better the condition of our people.

Such cries have always been with us — and, ultimately, they have always been overruled.

Lawyers distinguished in 1777 insisted that the Constitution itself was unconstitutional under the Articles of Confederation. But the ratifying conventions overruled them.

Lawyers distinguished in their day warned Washington and Hamilton that the protective tariff was unconstitutional — warned Jefferson



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From the Papers of
Samuel I. Rosenman

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that the Louisiana Purchase was unconstitutional — warned Monroe that to open up roads across the Alleghanies was unconstitutional. But the Executive and the Congress overruled them.

Lawyers distinguished in their day persuaded a divided Supreme Court that the Congress had no power to govern slavery in the territories, that the long-standing Missouri Compromise was unconstitutional. But a War Between the States overruled them.

Lawyers distinguished in their day persuaded the Odd Man on the Supreme Court that the methods of financing the Civil War were unconstitutional. But a new Odd Man overruled them.

That great Senatorial constitutional authority of his day, Senator Ezvarts, issued a solemn warning that the proposed Interstate Commerce Act and the Federal regulation of railway rates which the farmers demanded would be unconstitutional. But both the Senate and the Supreme Court overruled him.

Less than two years ago fifty of the highest priced lawyers in the land gave the Nation (without cost to the Nation) a solemn and formal opinion that the Wagner Labor Relations Act was unconstitutional. And in a few months, first a national election and later the Supreme Court overruled them.

For twenty years the Odd Man on the Supreme Court insisted that state minimum wage laws for women were unconstitutional. A few months

ago, after my message to the Congress on the reorganization of the Judiciary, the Odd Man admitted that the Court had been wrong — for all those twenty years — and overruled himself.

In this constant struggle the lawyers of no political party — mine or any other — have had a consistent or unblemished record. But the lay rank and file of political parties has had a consistent record.

Unlike other lawyers, they have respected as sacred all branches of their government. They have seen nothing more sacred about one branch than about either of the others. They have considered as most sacred the concrete welfare of the generation of the day. And with laymen's common sense of what government is for, they have demanded that all three branches be efficient — that all three be interdependent as well as independent — and that all three work together to meet the living generation's expectations of government.

That lay rank and file can take cheer from the historic fact that every effort to construe the Constitution as a lawyer's document rather than a layman's charter has ultimately failed. Whenever legalistic interpretation has clashed with contemporary sense on great questions of broad national policy, ultimately the people and the Congress have



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From the People to
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had their way.

But that word "ultimately" covers a terrible cost.

It cost a Civil War to gain recognition of the constitutional power of the Congress to legislate for the territories.

It cost twenty years of taxation on those least able to pay to recognize the constitutional power of the Congress to levy taxes on those most able to pay.

It cost twenty years of exploitation of women's labor to recognize the constitutional power of the states to regulate it and then minimize the constitutional power of the States to pass minimum wage laws to protect the workers. It cost twenty years to deny the Negroes their equality for their protection.

It has cost twenty years already — and no one knows how many more are to come — to obtain a constitutional interpretation that will let the Nation regulate the shipment in national commerce of goods sweated from the labor of little children.

We know it takes time to adjust government to the needs of society. But modern history proves that reforms too long delayed or denied have jeopardized peace, undermined democracy and swept away civil and religious liberties. Yes, time more than ever before is vital in statesmanship and in government — in all three branches of it, we will no longer be permitted to sacrifice each generation in turn while the law catches up with life. We can no longer afford the luxury of twenty-year lags.

You will find no justification in any of the language of the Constitution for delay in the reforms which the mass of the American people now demand.

Yet nearly every attempt to meet those demands for social and economic betterment has been jeopardized or actually forbidden by those who have sought to read into the Constitutional language which the Framers refused to write into the Constitution.

But the Constitution guarantees liberty, not licence masquerading as liberty. And no one cherishes more deeply than I the civil and religious liberties achieved by so much blood and anguish through the many centuries of Anglo-American history. Let me put the real situation in the simplest terms. The present government of the United States has never taken away and never will take away any liberty from any minority, unless it be a minority which so abuses its liberty as to do positive and definite harm to its neighbors constituting the majority. But the government of the United States refuses to forget that the Bill of Rights was put into the Constitution not only to protect minorities against intolerance of majorities, but to protect majorities against the enthronement of minorities.

Nothing would so surely destroy the substance of what the Bill of Rights protects than its perversion to prevent social progress. The correct protection of the individual and of minorities is that



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fundamental tolerance and feeling for fair play which the Bill of Rights assumes. But tolerance and fair play would disappear here as it has in some other lands if the great mass of people were denied confidence in their justice, their security and their self-respect. Desperate people in other lands surrendered their liberties when mere freedom came to mean humiliation and starvation. The crisis of 1933 should make us understand that.

On this solemn anniversary I ask that the American people rejoice in the wisdom of their Constitution.

I ask that they guarantee the effectiveness of each of its parts by living by the Constitution as a whole.

I ask that they give their fealty to the Constitution itself and not to its misinterpreters.

I ask that they have faith in its ultimate capacity to work out the problems of democracy, but that they justify that faith by making it work now rather than twenty years from now.

I ask that they exalt the glorious simplicity of its purposes rather than a century of wordy legalism.

I ask that majorities and minorities subordinate intolerance and power alike to the common good of all.

For us the Constitution is a common bond, without bitterness, for those who see America as Lincoln saw it "this last, this best hope



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of earth".

"As we revere it — not because it is old but because it is
ever new — not in the worship of its past alone but in the faith
of the living who keep it young, now and in the years to come.



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