



AMERICAN CONSTITUTIONALISM
 VOLUME I: STRUCTURES OF GOVERNMENT
 Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 7: The Republican Era – Federalism

OXFORD
 UNIVERSITY PRESS

David Jayne Hill, "The Crisis in Constitutionalism" (1913)¹

In the early twentieth century, conservatives worried that basic constitutional principles and perhaps constitutionalism itself was under challenge. Progressive reformers favored a host of constitutional amendments that would alter the inherited Constitution. The U.S. Constitution had remained unchanged by formal amendment since the close of Reconstruction and the addition of the Fifteenth Amendment, ratified in 1870. Two amendments were ratified in a single year in 1913, however, providing for the federal income tax and the direct election of senators. Other constitutional amendments on alcohol prohibition, female suffrage, child labor, and more were gaining steam, and some were urging a constitutional amendment to change the amendment process itself in order to make reform even easier. In scholarly, journalistic, and political circles, arguments on how an "organic" Constitution could be "adapted" to allow or achieve new political goals had become commonplace. More radical arguments that the Constitution was fundamentally flawed or outmoded were not uncommon, and some called for a federal constitutional convention to draft an entirely new document.

Conservatives grew nervous about this seemingly endless "tinkering" with the Constitution, even when they did not necessarily object to the specific reform under consideration. As troubling, in the words of Solicitor General James M. Beck, "The people are, at heart, not interested in their Constitution and the spirit of pragmatism dominates the consideration of every constitutional problem, if and when they consider it at all."² If the people were to resist the temptations of pragmatism, they would need to be repeatedly reminded of and taught to revere sacred constitutional principles. David Hill was the president of the University of Rochester and was among those concerned with the drift of American politics, especially in the aftermath of the presidential election of 1912 which put the Progressive Democrat Woodrow Wilson in the White House and featured strong showings by "Bull Moose" Teddy Roosevelt and Socialist Eugene Debs. Hill's essay, "The Crisis in Constitutionalism," warning of the danger and calling for public education on foundational principles of American government, was widely reprinted and distributed. A few years later, Hill became the founding president of the National Association for Constitutional Government, dedicated to opposing the initiative, referendum, and recall and promoting "more accurate knowledge of constitutional government as conceived by the founders of the Republic."

....

The dangers to Constitutional Government . . . do not arise from the open opposition of its enemies. . . Its real foes, — and they are not a few, — are those who do not avowedly attack or resist it; but who, while professing to be its friends and its advocates, secretly repudiate, or intentionally pervert, its fundamental principles.

In contrast with the political absolutism which it was intended to destroy, and which it has endeavored to supersede, Constitutional Government is based upon the principle of equal guarantees for the rights of all citizens, without distinction of persons or classes, under the protection of co-ordinate and distributed powers, exercised by public officers freely chosen by the people, and revocable after fixed periods of office. . . .

The mere statement of the meaning of Constitutional Government plainly indicates who are its natural enemies. These include all those who, in any form whatever, desire to make the State their private

¹ Excerpt taken from David Jayne Hill, "The Crisis in Constitutionalism," *North American Review* 198 (1913): 769.

² Quoted in Michael Kammen, *A Machine That Would Go of Itself* (New York: Vintage, 1986), 231.



servant, and through control of the public powers use it to serve their own personal or class interests at the expense of others.

....

It is easy to see how this system could be covertly attacked by those who, consciously or unconsciously, were inspired by motives for subverting it.

The first method of attack is through the hasty alteration of the fundamental law itself.

Undoubtedly, any inflexible obstacle to a transitory popular impulse can at times be made to appear too rigid, but it is precisely this clear and definite obstruction to impulsive and ill-considered action which constitutional guarantees are intended to impose. It is always a dangerous moment for the liberties of a people when it is proposed to substitute for the deliberately established reasonableness of a constitutional provision the impromptu and uncontrolled impulses of the moment; or to open the way without serious reflection and debate for mere political experiments.

....

A second point of attack upon the Constitution is through the encroachment of one or more of the three divisions of public power upon the legitimate domain of the others. The American conception of government has always laid stress upon the balance of the public powers, which is intended to limit the excesses of all. When, however, we consider the possible effect of the power concentrated in one man both to urge and to veto new laws, backed with the enormous influence of Federal patronage . . . we could contemplate the nearest approach to absolute power now to be found in any constitutional government in the world. . . .

But encroachments upon constitutional limitations by the executive are not more dangerous than those of a legislative origin. . . . It is, therefore, essential that the judiciary be free, pure, and faithful in the interpretation of the fundamental law. It is equally important that it should have the confidence and support of the people. Nothing could so fatally affect the foundations of Constitutional Government as a loss of confidence on the part of the people in the purity, fidelity, and intelligence of the judiciary. By every means that will leave it free and responsible it should be placed and kept upon the highest plane of honor and authority, for it is by its essential nature the guardian of our guarantee of liberty.

....

The greatest present danger to Constitutional Government is the revocation of [the] splendid sacrifice of personal advantage to the common well-being; the agreement of the people not to attempt an act of conquest upon one another, but to live on terms of equality under just laws.

....

We have in recent years developed in the United States a spirit of class antagonism which is peculiarly disquieting. . . . The one undeniable fact is that this antagonism exists, and that it has been stimulated by political ambitions that have found their advantage in creating unrest and in deepening the hostility of certain conditions of life toward others.

....

Books have recently been written with the endeavor to make it appear that the Constitution of the United States is a belated eighteenth-century construction, devised in the interest of a property-possessing class, and at present an anachronism. For the first time since it was adopted the Constitution has within very recent years been treated with open disrespect. What is the reason for this opposition? It is that the Constitution presents an obvious barrier to the designs of those who oppose it. If we seek the actuating principle of this opposition, we find it in the doctrine that the unregulated will of the majority is a more desirable form of authority than deliberately accepted principles of government sanctioned by general assent and tried and tested by experience.

Should this tendency become further accentuated by combinations of power able eventually to control the State in their own interest—we should find ourselves in a position not dissimilar from that in which Mexico is placed to-day—divided into hostile factions, one class plundered by another, and the country utterly powerless to defend its interests or maintain its dignity in the field of international relations.

The means of preventing this calamity—or the remedy for it, if it is already in some degree upon us—is evidently a determination on the part of the people that arbitrary power in every form must be



renounced; that life, liberty, and property shall still enjoy protection against any form of absolutism that may be asserted within the State.

....

OXFORD
UNIVERSITY PRESS

Copyright OUP 2013