Please accept the accompanying book for review.

The price of this book
$3.00
is

Publication Date

We shall be glad to receive a copy of the issue containing your review when it appears.

HENRY HOLT
AND COMPANY
One Park Avenue  New York
THE GROWTH AND DECADENCE OF CONSTITUTIONAL GOVERNMENT
THE GROWTH AND DECADENCE OF
CONSTITUTIONAL GOVERNMENT

BY
J. ALLEN SMITH, LL.B., Ph.D.
LATE PROFESSOR OF POLITICAL SCIENCE
UNIVERSITY OF WASHINGTON

AUTHOR OF "THE SPIRIT OF AMERICAN GOVERNMENT"
"THE MULTIPLE MONEY STANDARD"

INTRODUCTION BY THE LATE
PROFESSOR VERNON LOUIS PARRINGTON

NEW YORK
HENRY HOLT AND COMPANY
ACKNOWLEDGMENT

In preparing the manuscript of this book for publication I have had the invaluable help and advice of the late Professor Vernon Louis Parrington of the University of Washington. I desire to acknowledge my great indebtedness to him and to Professor Edward McMahon of the University of Washington and to Professor Peter Odegard of Williams College.

Elfreda Allen Smith
## CONTENTS

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. In\v longe of Theological Speculation on the Early Constitutional Movement</td>
<td>3</td>
</tr>
<tr>
<td>II. Limitation of Political Power in the Period Immediately Following the American Revolution</td>
<td>12</td>
</tr>
<tr>
<td>III. The Struggle for a Democratic Suffrage</td>
<td>27</td>
</tr>
<tr>
<td>IV. Some Indirect Results of the Extension of the Suffrage</td>
<td>57</td>
</tr>
<tr>
<td>V. The Constitution-interpreting Power in the Period Immediately Following the Adoption of the Constitution</td>
<td>79</td>
</tr>
<tr>
<td>VI. The Origin and Significance of the Judicial Veto</td>
<td>95</td>
</tr>
<tr>
<td>VII. Governmental Supremacy under the Guise of Popular Sovereignty</td>
<td>113</td>
</tr>
<tr>
<td>VIII. Natural Law and Natural Rights as Checks on Governmental Authority</td>
<td>162</td>
</tr>
<tr>
<td>IX. Centralization and Popular Control</td>
<td>186</td>
</tr>
<tr>
<td>X. Imperialism and Governmental Authority</td>
<td>202</td>
</tr>
<tr>
<td>XI. International Relations as a Check on the Power of the State</td>
<td>237</td>
</tr>
<tr>
<td>XII. The Jury System as a Check on Governmental Power</td>
<td>252</td>
</tr>
<tr>
<td>XIII. Patriotism and Governmental Power</td>
<td>267</td>
</tr>
<tr>
<td>XIV. Individual Liberty and Governmental Authority</td>
<td>277</td>
</tr>
</tbody>
</table>
INTRODUCTION

The late Professor J. Allen Smith, the results of whose last studies in American government appear in the present volume, was one of the intellectual leaders of the Progressive movement that so creatively influenced the political thought of the past generation. His earlier writings were an influential contribution to the great uprising of liberalism that between the years 1903 and 1917 sought to adjust the cumbersome machinery of government to the changing needs of a democratic people. His political philosophy, with its strong Jeffersonian sympathies, was shaped by the democratic awakening that issued from the crude exploitations and sordid machine politics of the Gilded Age; and he was fortunate in writing at a time when the liberal thought of America was becoming conscious of the gross contradictions between our traditional ideals and a Tory political practice. His notable study, The Spirit of American Government, published at a moment when liberal thought was beginning to clarify, was singularly opportune. It made wide appeal and it did more perhaps than any other single study to explain the constitutional sources of the democratic shortcomings and suggest the logical remedies.

The significance of that work is to be found in the realism of its method and the historical validity of its findings. At the time of its appearance the rising liberalism was in a realistic mood. The blowsy romanticisms that earlier had befuddled the American mind were pretty much dissipated.
INTRODUCTION

The argument of events had long been sobering and chastening the slack frontier faith in our manifest destiny. The long agrarian revolt that culminated in the campaign of 1896, and the Muckraking movement that got under way in 1903, had destroyed the comfortable illusion that democracy in America was a going concern that needed no oversight, and groups of volunteer political thinkers in every part of the country were considering ways and means of returning the great experiment to the path it had wandered from. It was a time of wide and serious interest in the theory and practice of politics. Historical scholarship—particularly the school of Turner with its discovery of the influence of the frontier on American psychology and institutions—was beginning to resurvey the American scene in a spirit of critical inquiry that was to throw a flood of light on our origins. The Age of Innocence was past, and a mood of honest realism was putting away the naïve myths that passed for history and substituting homely authentic fact. With the growing recognition of the intimate relations between economics and politics, America was on the threshold of intellectual maturity.

In this inevitable rapprochement of scholarship and reality, academic political scientists were slow to join. It was repugnant to their conservative temper. The more vigorous amongst them—capable men like Professor John W. Burgess—were still engaged in erecting speculative systems, deifying the abstract political state, exalting the doctrines of sovereignty, laying snares for democracy in the shape of a Teutonic cult of power impersonal as fate. They had turned away from our Jeffersonian past and were outrunning the forces of an encompassing consolidation. From such thinkers, even less than from the academic apologists of the existing order, the democratic liberalism of the times could receive no help. They were partisan ad-
INTRODUCTION

vocates of the very forces the new liberalism was seeking to curb. In his early recognition of this fact Professor Smith stood almost alone amongst our academic political scientists. He was one of the first to subject the new theory of sovereignty to critical analysis and demonstrate its undemocratic tendencies. All his liberal instincts protested against such attempts to erect fresh tyrannies in the form of a superpolitical state, above the subject-citizen, irresponsible to the popular will, useful only to the masters who controlled it. He wanted rather to travel in the opposite direction, to complete the democratic programme that had been left unfulfilled by the Jacksonian revolution. To accomplish that purpose new democratic machinery must be provided. The Jacksonian movement had been a frontier uprising against the rule of eighteenth-century aristocracy. It had been animated by a spirit of rude leveling, of laissez-faire individualism, and having established the principle of manhood suffrage it was content to leave democracy to its own devices. From such slackness had issued all the evils of the Gilded Age plutocracy that discovered in Jacksonian individualism a heaven-sent opportunity. A lawless and unregulated individualism was destroying democracy. Government was becoming the mouthpiece and agent of property interests. Something had gone wrong with the democratic plans and it was time for the friends of democracy to take stock of the situation.

In its consideration of the causes of so great a miscarriage, the liberalism of the early years of the century came finally to question the system of government laid down in the fundamental law. Considered historically perhaps the chief contribution of the Progressive movement to American political thought was its discovery of the essentially undemocratic nature of the federal constitution.
INTRODUCTION

That so obvious a fact escaped attention so long was due to political causes easily understood. For a century the Constitution had been a symbol of national unity, a strong cohesive force amidst the anarchisms of expansion, a counter influence to the disintegrations implied in local interests and sectional jealousies. To strengthen its influence as a common bond was a useful and necessary tendency, quickening the national consciousness in every commonwealth. To criticise it soon came to be reckoned disloyal, and as the interpretation of its terms fell increasingly into the hands of lawyers, who were eloquent in praise of its excellence, it was invested with reverence and the pride of patriotism by the rank and file of the American people.

In all the abundant commentary that grew up around it — except for a small group of left-wing Abolitionists who scandalously rejected the entire instrument — no question as to the democratic spirit of the Constitution was raised, no doubts as to its sufficiency as a fundamental democratic law were suggested. The aristocratic spirit of its makers was ignored and the bitter class divisions that accompanied its adoption were forgotten. But with the liberal revolt against the custodianship of government by financial and industrial interests came a new critical interest in the terms of the Constitution. Discovering when it attempted to regulate business that its hands were tied by judicial decrees, the democracy began to question the reason for the bonds that constrained its will. Distrust of the judicial exercise of sovereign powers spread widely with the setting aside of successive legislative enactments, and it became acute when the Supreme Court declared unconstitutional the Federal Income Tax Law. From that moment the question of the desirability of an eighteenth-century Constitution that by its complexity unduly impeded the
functioning of the majority will was thrust into the foreground of political debate. It was the struggle of 1789 over again.

The new school of criticism was historical rather than legalistic. It went back to the origins of the Constitution. It inquired into the political theories and class interests of the men who framed the instrument; it analysed the reasons for the several articles as well as the effect of them; it gathered materials from many sources to throw light on the deliberations of the Convention. From such realistic historical investigation it discovered — so it believed — the vital issue of the political struggles of the "critical period" — the question of majority or minority control of the new venture in republicanism. The Constitution took its special form in response to the demands of financial and landed interests for adequate protection against democratic control with its populistic measures. In the difficult days following the Peace of Paris, agrarian majorities in such states as Rhode Island and New Hampshire had enacted legislation favorable to the poorer classes. The business interests had taken alarm at the prospect of a future government more friendly to poverty than to wealth, and they were quietly casting about for ways and means of taking control out of the hands of the agrarian democracy. The solution of the problem was obvious. It lay in substituting for the democratic Articles of Confederation — which the aristocratic party organized all its forces to cry down — an instrument more adapted to their needs. Hence the complexity of the Constitution as it came from the Convention — a complexity that was of the essence of their plan. Hence the elaborate system of checks and balances that limited the powers of the majority will and reduced the democracy, as Franklin observed, to the plight of the two-
headed snake, which coming to a twig on the way to water debated so long over the better path that it died of thirst. Studied thus in the light of Elliot's Debates, set against the bitter class struggles that came to a dramatic issue in Shays' Rebellion, the conservative temper of the Constitution explains itself. It was a deliberate and well-considered protective measure designed by able men who represented the aristocracy and wealth of America; a class instrument directed against the democracy that took form in the reactionary interval between two radical democratic periods, the earlier American Revolution and the later French. To assume that it is a democratic document is to misread history and misinterpret fact.

Established thus in the historical method the new criticism quickly passed through two phases, the political and the economic. The first was concerned with an examination of the Constitution in the light of the class alignments of its makers—the clash between aristocracy and democracy from 1783 to 1789; and the second, in the light of their economic affiliations—the clash between the greater landed and financial interests and the agrarian interests. The two in reality were one, but as the economic interpretation of history grew in favor stronger emphasis came to be thrown on the latter. Of the earlier phase Professor Smith's The Spirit of American Government (1907) was the authoritative embodiment; and of the later Charles A. Beard's An Economic Interpretation of the Constitution (1913), and The Economic Origins of Jeffersonian Democracy (1915). These searching studies sum up the democratic case against the Constitution as it was formulated by the liberalism of pre-war days, and they go far to explain the temper of the Progressive movement in its labors to democratize the instrument through the direct pri-
mary, the initiative, the referendum, the recall, and the like.

*The Spirit of American Government* was published at a moment when the public mind was peculiarly receptive to its liberal interpretation, and its influence in shaping the programme of the Progressive party was immediate and stimulating. It provided the leaders of the La Follette "Insurgent group" with an interpretation of American constitutional history congenial to their temper; it gave them a convincing explanation of the reasons for the failure of democracy in American political practice; and it was drawn upon freely in Congressional debates. The theme of the book is an expositional of the checks and balance theory of government, the reasons why so cumbersome a system was adopted and the impossibility of effective democratic government under it. To the liberalism of 1907, however, the most suggestive contribution was the demonstration from the speeches and writings of the time that the system was devised deliberately for undemocratic ends. Since then the dramatic story of this struggle between rival economies has been retold many times, but in 1907 it was new and strange and it came home to the liberal mind with startling significance. From the appearance of Professor Smith's work must be dated a changed attitude towards the Constitution. The note of indiscriminate praise has given place to rational commentary. Amongst competent students today the undemocratic nature and intent of the fundamental law is accepted as a commonplace. There are no longer grounds for difference of opinion in the matter. But with the decline of liberalism since the war the defenders of the existing order have chosen to set up the logical defense that the Constitution is wisely undemocratic, for under a democratic instrument good government would be im-
INTRODUCTION

possible. We have come back at last to the frank honesty of 1789 when gentlemen did not conceal their low opinion of the ways of the majority.

Professor Smith refused to be discouraged by the conservative reaction that was in full swing while he was preparing his studies for the press, and in the volume now appearing he has carried further his exposition of the gentle art of thwarting the majority will by legal and constitutional means. A democrat grown old in the cause, a confirmed and unrepentant liberal, he was too strongly saturated with Jeffersonian ideals to approve the ways of our triumphant plutocracy. The present volume, the manuscript of which has been revised by his daughter, Miss Elfreda Allen Smith, who served as his secretary in the preparation of the work, unfortunately will not find so well-informed or liberal a public as welcomed his earlier study, and its popular influence no doubt will be less. That it will make its way ultimately to wide influence one may at least hope.

I have written these few meagre pages of comment on the life-work of a courageous and self-sacrificing scholar with a deep sense of personal loss. For nearly twenty years Professor Smith was my colleague and friend, and our intellectual interests and political sympathies travelled congenially the same paths. A vigorous and stimulating teacher, he trained large numbers of young men, some of them of unusual ability, who have carried his liberal spirit to widely scattered academic posts. That so outspoken a critic of the Constitution should have suffered ungenerous attack was, no doubt, to be expected. The hornets are quick with their stings if the nest of privilege is disturbed. The high price exacted of him for his courage and sincerity, his
friends are well aware of, yet none ever heard him complain or recriminate. It was part of the price the scholar must pay for his intellectual integrity and he paid it ungrudgingly.

Vernon Louis Parrington ¹

The University of Washington
Seattle

¹ Died June 16, 1929, at Winchcombe, Gloucestershire, England.
INDEX

Absolutism, movement to overthrow, 3
Adams, John, opposition to universal suffrage, 28; belief in government founded on property, 29
Alabama, suffrage requirements, 38n, 126
Alien and Sedition laws, 87, 88
Alliances, 241
Amendments. See Constitution of United States, amendments
American colonies, compulsory voting, 54
American Revolution, political result, 12; conception of the state during, 14; political thought, 15, 179; aim, 274
Apportionment of representation. See Representation
Aristocratic conception of state, 215
Armies, standing, a menace to individual liberty, 24; control of, 144; opposition to, 214. See also Preparedness
Articles of Confederation, state sovereignty under, 90, 91; framing and adoption of, 114; provisions for change in government, 119; disregard of provisions of, 120; defects, 122
Ashley, R. L., quoted, 153
Australia, discrimination against cities, 76
Authority, limitation of, 3, 6, 162; after the Revolution, 12–26, 81, 85, 87, 148, 163; concentration of, in the business world, 203. See also Governmental authority; Political power
Balance of power, 247
Ballot, secrecy of, safeguarded, 47
Belgium, suffrage system, 49, 54
Berlin, representation restricted, 69
Bills of rights, 23, 25, 28
Bryce, James, 182
Buell, David, Jr., quoted, 32
Burgess, J. W., on distinction between government and state, 113, 154, 157, 160
Business, influence upon politics, 200; concentration of authority in, 203; competitive regulation of, 225; interests opposed to regulative agency, 248
Business men. See Capitalistic groups
Calder v. Bull, 103n
Calhoun, John C., constitutional interpretation, 92, 159
Capitalistic groups, political influence, 199, 223; economic influence, 202, 203, 221; influence upon foreign relations, 209; responsible for militarism, 212; governmental support of, 216; advocate cancellation of inter-Allied debts, 220; responsible for recent wars, 221; suppress competition, 226; opposed to regulative agency, 248
Censorship, 285
Census, state, provisions for, 68
Centralization of industry, 199, 228; danger of international control, 245; of political power, 90, 94, 186–201
Check and balance plan, in federal Constitution, 79, 81, 86, 88, 90, 93, 201, 147; in municipal government, 195
Check and balance theory, applied to economics, 202; to international politics, 245; political,
INDEX

253; applied to judicial interpretation of law, 262
Chisholm v. Georgia, 112
Christian religion, attitude toward ideal of equality, 175; imperialistic, 210
Church, supports imperialistic plans of the state, 211
Church and state, 4
Cities. See Municipalities
Citizenship, rights of the disfranchised, 23; right to vote implied, 36
Civil cases, trial by jury needed, 261
Clague, Ewan, cited, 66n
Class control, unsatisfactory, 207; of colonies, 208
Colonial possessions in danger of exploitation, 208
Combinations, power to fix prices, 226
Common law, in England, 95
Competition, efforts to overcome restraints imposed by, 202; as a regulative principle, 226; socialists' attack on, 227
Confederation. See Articles of Confederation
Congress, United States, apportionment of representation in, 71; election of Senators, 72; war-making power, 146
Conkling, Roscoe, 124n
Connecticut, restrictions on suffrage, 181
Conservatives, advantages under constitutional system, 59, 61, 102
Consolidation, industrial. See Industry, centralized control in
Constitution of United States, no bill of rights included in original, 25; reverence for, 57, 60, 95, 149; legal conception of, 58, 95, 97, 149, 151, 159; political literature on, 59; provisions for apportioning representation, 71; check and balance plan, 79, 81, 85, 88, 90, 93, 101, 147; of authority, 81, 85, 87, 90; methods of enforcing limitations, 86; power over states, 90; constitution-interpreting power of Supreme Court, 97, 101, 111, 186; made a bulwark of conservatism, 101; amendments to correct judicial misinterpretation, 111; framing of, 114, 119, 156; method of ratifying and amending, 116, 118; method of adopting, 120; limitations against authority: propaganda to win popular support for, 148; distinction between state and government, 156; deification of, 270; and individual liberty, 277;

Amendments
Second, 26; Fifth, 265; Sixth, 260; Seventh, 262; Eleventh, 112; Fourteenth, 40, 123, 187; Fifteenth, 125, 183; Sixteenth, 112; Seventeenth, 72; Nineteenth, 42
Constitution-interpreting power, 79–94; of the courts, 95–112
Constitutional convention, provisions for: representation, 116; ratification by, 118; a sovereign body: power to promulgate, 137
Constitutional law, dependence upon government, 123; Wilson on, 149; as distinguished from statute law, 150; made and interpreted by government, 157
Constitutional movement, influence of theological speculation, 3–11
Constitutionality, consideration of, 58
Constitutions, give advantage to conservatives, 59, 61; not based upon idea of popular sovereignty, 60; faith in provisions of, 67; difficulty of amending, 72; power of the people to make, 141; suspension of guarantees during war, 144, 146
Constitutions, state, early, 14, 16; provisions for apportioning
INDEX

representation, 61, 66; nullification of provisions, 68; enumeration of powers by, 117; methods of framing, amending and ratifying, 116, 127; submission to the people, 117, 127, 132, 136; attitude of the courts toward referendum, 118, 132, 136; Reconstruction constitutions, 127, 180; political rights guaranteed by, 133; acceptance of, 138; coup d’état method of adoption, 140; declarations of equality, 179; doctrine of white supremacy, 181, 183; right of revolution, 274. See also under names of states

Contracts, laws impairing the obligation of, 187

Cooley, T. M., quoted, 110

Coöperation, lack of among farmers, 198; international, 242, 245

Corporations, protected by Fourteenth Amendment, 124

Counties, representation by, 66

Coup d’état, 140

Courts, contribute toward centralization of political power, 186; refuse to recognize local self-government as a right, 191; control over juries, 258, 265. See also Judiciary; Supreme courts

Criminal cases, trial by jury, 261, 264

Criminal syndicalism laws, 256

Criticism of government regarded as treason, 270

Cuba, intervention in, 232; political status, 233

Dante, 244

Debt, public, limitation of, 74; cancellation of inter_Allied advocated, 220; public, effect upon capitalists, 222

Declaration of Independence, 120, 156, 183, 184; subordination of governmental authority in, 14; not a constitution, 15; emphasis on natural law and natural rights, 16, 178; part of the people in public affairs, 52; right of revolution, 141, 143, 156, 274; influence of liberal political ideas, 224; warning enthusiasm for, 228; discredited, 229; conception of individual liberty and sovereignty, 238

Declarations of rights, 23, 28

Delaware, first Constitution, 17; attitude toward war, 25; compulsory voting, 54; method of adopting latest constitutions, 127

Delegated powers, judicial attitude toward, 107, 109

Democracy, 23, 51; attitude of judiciary toward, 70, 73, 102, 104, 109, 110; power of opposition to, 76; efforts to discredit, 80, 90; fear of, 104, 157, 195; method of limiting judicial control, 111; influence of Christianity upon, 176; suitable only for advanced communities, 206; influence upon foreign relations, 209; militarism incompatible with, 217; individual liberty abridged in, 283, 284. See also Majority rule

Democratic ideas, discredited in recent decades, 162, 183

Democratic party, advocates woman suffrage, 42

De Tocqueville, 181; quoted, 283

Dicey, Professor, quoted, 35

Distribution, capital’s control of, 203

Divine law. See Natural law

Divine right doctrine, 4, 166, 171, 177, 267

Dodd, W. F., cited, 116, 117, 129

Dorr, Thomas W., 141

Dorr’s Rebellion, 141

Economic classes, competition between, 203

Economic power, centralization of, 199
Economics, theory of checks and balances applied to, 202
Economists. See Political writers
Educational qualifications for suffrage, 39, 133
Eighteenth century idea of government, 4, 185
Enabling acts for admission of states, 118
England, government, 3, 58, 152; secret ballot for parliamentary elections, 47; suffrage reforms, 48; common law and the judiciary, 95
Equality, doctrine of, influence of Christianity, 175; implied in social contract theory: Hobbes on, 177; proclaimed in Declaration of Independence and state constitutions, 179; limited in actual practice, 181; expressed in idea of individual liberty, 182; undermined, 229
Executive, war powers, 144
Expansion, 223
Farmers, political effect of lack of cooperation, 198
Federal, name, adopted, 91; implications of, 92
Federal power. See Government
Federalist party, adopt Alien and Sedition laws, 87; advocate conservative control of constitutional interpretation, 97; view as to ratification of constitutions, 118; defend method of adopting Constitution, 120, 132
Federalist, The, governmental doctrines, 89, 108, 151, 162
Fiske, John, cited, 230n
Fletcher v. Peck, 103
Foreign offices, capitalistic control of, 448
Foreign relations, not under effective popular supervision, 208; capitalistic control of, 209; interest in expansion, 223; policy of Declaration of Independence, 225
Forman, S. E., quoted, 154, 184n
Fourteenth Amendment. See under Constitution of United States: Amendments
France ignores authority of League of Nations, 245
Freedom of speech, press and assembly, 23, 24, 287
Fundamental law, conceptions of, 58; democratic interpretation of the, 275; an expression of popular will, 277; government controls interpretation of, 279. See also Constitution
Gallatin, Albert, quoted, 63
Georgia, Constitution of 1777, 17; compulsory voting, 54; land grant case, cited, 103
Germany, suffrage system, 50, 69, 77; war-making power of executive, 145
Gibbons, James, Cardinal, quoted, 98
Giles v. Harris, 126
God, sovereignty of, 5
Government, before the American Revolution, 3; movement to limit power of, 12-26; philosophic foundation, 16; collective control, 18; democratic organization, 23, 51; centralization and popular control, 90, 94, 186-201; dependence of constitutional law upon, 123; right to resort to revolutionary procedure, 143; power to declare war, 144; comparison of early with later theory of functions, 162, 165, 185; by injunction, 264; dangers of loyalty, 272; origin of. See Social contract theory
Federal, relation to states, 89, 93; attitude toward people in struggle against state authority, 142
And state, distinction between, 113, 147, 278; Burgess on, 113, 154, 157, 160; Wilson on, 149; Willoughby on, 152; textbooks
INDEX

on, 152; in the Constitution, 156; Calhoun on, 159
Government bonds, 219
Governmental authority, limitation of, 85, 87, 90; given to judiciary, 99; natural law and natural rights as checks on, 162–85; international law as check on, 240; jury system as check on, 252–66; individual rights as check on, 282. See also Political power
Governmental supremacy under the guise of popular sovereignty, 113–61
Governmental system, effect of League of Nations upon, 147
Grandfather clause, 126, 131
Great man theory of society, 230
Greece disregards authority of League of Nations, 245
Greenback platform, favors woman suffrage, 41
Grote, George, cited, 48

Habeas Corpus, writ of, 144
Hamilton, Alexander, desire for centralized government, 90, 94, 188; support of Supreme Court, 98, 108; views or sovereignty, 162
Hobbes, Thomas, quoted, 43, 166, 177
House of Lords, veto power abolished, 49
Hume, David, 168, 177; quoted, 169

Imperialism, and governmental supremacy, 202–236; menace of, 203; humanitarian and ethical guise, 204; fallacy in justification of, 207; church support, 211; in United States, 223, 232; capitalistic propaganda, 232
Income, effect of imperialism on distribution of, 204; expenditures for military purposes alters distribution, 218
Income Tax decision of 1895, 112

Independence, lack of, in America, 283
Individual, disregarded, 272; state not bound to recognize rights of, 278, 280
Individual liberty, 10, 16, 182; during Revolutionary period, 15; standing army a menace to, 24; conception of, in Declaration of Independence, 238; federal courts designed to protect, 259; and governmental authority, 277–287; right of Supreme Court to interpret, 279; respect for, 283
Industrial consolidation. See Industry, centralized control in

Industry, aided by Fourteenth Amendment, 124; competitive regulation of, 202; capitalistic control of, 215; centralized control in, 199, 218; danger of international control, 246; international scope, 247
Inequality, justification of, 230, 231
Injunctions, 264
Institutions a result of slow growth, 83
Intellectual freedom, 286
Internal danger, reason for maintaining military establishment, 214
International law, 240, 243
International organization, need of permanent, 242; intellectual and moral foundation for, 245
International relations as a check on the power of state, 237–51
International-mindedness needed, 245

Jefferson, Thomas, 188; Kentucky Resolutions, 90
Johnson, Justice, quoted, 103
Judges, appointment and life tenure, 100; jury system as a check on, 258; irremovable in United States, 260. See also Judiciary
English, subject to removal, 260
State, restrained by juries, 259
INDEX

Judicial veto, origin and significance, 95-112, 113

Judiciary, opposition to democracy, 70, 73, 109, 104, 109, 110, 125; interpretation of the common law, 95; doctrine of supremacy of, 96, 102, 108; creation of faith in, 97; acknowledgment of constitutions as source of power: method of limiting control of, 111; attitude toward constitutional referendum, 118, 132, 136; interpretation of Fourteenth Amendment, 124; of Fifteenth Amendment, 126; attitude of economists toward, 150, 151, 155, 158, 160. See also Supreme Court

Jury, trial by, as check on governmental power, 252-66; subordination to court, 254; unanimity rule, 255, 261; in Federal courts, 258; Constitutional amendments relating to, 260, 262; limitation on power of juries, 263; regarded as obstacle to protection of capital, 264; Injunction nullifies right of, 265

Jurymen, qualifications, 253, 257

Kendrick, B. B., 124n

Kenin, Harry Marvin, cited, 252n

Kent, James, Chancellor, 31; quoted, 32, 62

Kentucky Resolutions, of 1798, quoted, 89; of 1799, 90, 179

Kimball, Everett, quoted, 152

Labor disputes, use of injunctions in, 264

Laws, nullification of, 125

Laboring class, efforts to minimize effects of vote of, 62, 72; organization for political influence, 108; excluded from jury duty, 258; at a disadvantage in trial by jury, 261

Law, system of, back of governmental organization, 81; control of interpretation and enforce-

ment of, 149, 160; advantage of, on side of capital, 215. See also Constitutional law; Fundamental law; Jury, trial by; Natural law

Lawyers, influence upon political thought, 58, 95, 97; attitude toward jury system, 263, 265

League of Nations, limitation of powers by, 147; purpose, 243; weakness of, 245; chief danger, 246

Legal theory of constitutional system, 58, 97, 149, 150; opposed by Calhoun, 159

Legislation, state, effort of courts to control, 104, 111

Legislative powers, 107, 108, 109

Legislatures, failure to reapportion representation, 68, 71, 133; illegally organized, 70; ratification by, 115; representation in, 117

Liberty of the individual. See Individual liberty

Limitation, of authority. See Authority: of output. See Production

Limitations, constitutional, 81, 85, 87, 90

Loan Association v. Topeka, 148

Loans for military and productive purposes, 219

Local government, power of, limited by states, 187, 195; attitude toward, influenced by extension of suffrage, 190; refusal of courts to recognize, as a right, 191

Local option laws, judicial attitude toward, 105, 108, 110

Locke, John, cited, 14, 109, 110, 167; quoted, 107

Louisiana, suffrage requirements, 38n; method of adopting constitution, 128

Loyalty, 273

Madison, James, on limitations of federal power, 89; Virginia Resolutions, 89; on method of
INDEX 295

adoption Constitution, 120, 122; cited, 155n
Mahan, A. T. quoted, 213, 217
Majority rule distrust of, 61, 80; prevented by apportionment of representation, 62, 72, 125; constitutional safeguards against, 79, 85. See also Democracy
Mallock, W. H. cited, 230n
Manhood suffrage. See Suffrage
Markets foreign competition excluded, 204
Marshall, John decisions, 103; on ratifying Constitution, 118; on derivation of power, 149
Maryland, Bill of Rights, provision for suffrage, 28; compulsory voting, 54
Massachusetts, Constitution of 1780, declaration of equality, 179; suffrage requirements, 180
Masses. See People
McCulloch v. Maryland, 118, 149
Melbourne Herald, cited, 77n
Militarism, organized capital responsible for, 212; incompatible with democracy, 217; safeguard against over-supply, 218; yields income to capitalists, 219; taxation of capital for support of, 222; League of Nations fails to curb spirit of, 245
Mill, John Stuart, quoted, 43, 46, 67
Minorities, federal courts designed to protect, 259
Minority control, 83
Missionaries, agents of imperialism, 211
Mississippi, suffrage requirements, 38n; method of adopting Constitution, 128, 137
Monarchical system, 166, 171, 177
Monopoly, 226
Monroe, James quoted, 36
Monroe Doctrine, imperialistic interpretation, 234
Montesquieu, quoted, 45
Municipal ownership, opposition to, 74
Municipalities, suffrage in, 62; political influence, 63; state control, 64, 73, 188, 195, 197; representation restricted, 65, 72; limitations on right to incur indebtedness, 74; representation in Russia, 78; representation, 134; local self-government, 192; attitude of courts toward, 193
Nations, non-capitalistic, in danger of exploitation, 250
Natural law, 9; conception of, 81, 95; attitude of judiciary toward, 103; appeal from constitutional provisions to, 120, 122; and natural rights as checks on governmental authority, 182-85; industry and distribution regulated by, 202
Natural law political philosophy, 15
Natural resources, ownership, 206
Navy, control of, 144; preparedness. See Militarism
Negro suffrage restrictions, 38, 39; provisions of Fourteenth and Fifteenth Amendments for, 124, 125; attitude of Supreme Court: constitutional provisions against, 126; devices employed against, 131
Negroes, doctrine of equality not applied to, 181, 183; excluded from jury service in South, 258
New Hampshire, attitude toward standing army, 25; Bill of Rights provision for suffrage, 28
New Jersey, Constitution, 16; woman suffrage, 41; restrictions on suffrage, 181
New York, City, opposition to extension of suffrage in, 62, 73
State, Constitution, 16; attitude toward standing army, 25; suffrage question, 31; Constitution of 1821: suffrage provisions, 37, 39, 63, 181; state constitutional convention of 1821, 62; of 1867-68, 73
INDEX

Newspapers, loss of advertising a penalty for independence, 287
Non-Christian nations, in danger of exploitation by Christian capitalism, 250
North Carolina, attitude toward standing army, 25
Northwest Territory, property requirements for office and suffrage, 30
Nullifying power. See Judicial veto; Supreme Court
Office, property as qualification for, 27, 30
Ogg, F. E. and Ray, P. O., quoted, 184n, 277, 278
Olney, Secretary, quoted, 235
Opinion, capitalistic control of, 286
Organized wealth. See capitalistic groups
Output. See Production
Panama Canal, political significance, 234
Parker v. Commonwealth, 105, 108
Parliament, not hampered by constitutional law, 59
Patriotism and governmental power, 267-76
Peace, international, power a menace to, 241
Pennsylvania, Declaration of Rights, proposal regarding standing army, 25; provision for suffrage, 28; Constitution of 1873, 74; of 1838, 105, 107; Supreme Court decision, quoted, 105, 109; restrictions on suffrage, 181
People, the, as source of political authority, 14, 17, 20, 24, 163, 167, 168, 173; lack of political intelligence, 82, 97, 101, 114, 251; relation to legislatures, 107; fate of any organized effort for representative government, 142; bear burden of military expenditures, 218; protectors of the Constitution, 274. See also Popular sovereignty: Public opinion
Philanthropy, 231
Philippine Islands, political status, 233
Philosophy, individualistic, 18
Platt amendment to the army appropriation act, excerpt, 233
Plural voting, 48
Poland disregards authority of League of Nations, 245
Political authority. See Government
Political development, control of, 82
Political intelligence, lack of, 82, 97, 101, 114, 251
Political philosophy, natural law, 15; of the Revolutionary period, 19, 23
Political power, limitation of, after the American Revolution, 12-26; struggle over, 82, 87, 90, 94; doctrine of limitation, 85; judicial limitations upon, 95-112; granted to the people by the Constitution, 157; comparison of early with later theories, 162, 165; popular control of, 186-201. See also Governmental authority
Political rights guaranteed by constitutions, 133
Political system, deification of, 149, 270
Political writers, on constitutional system, 59, 67, 101; on the judiciary, 108; on distinction between government and state, 113, 149-55; on social contract theory, 166, 169, 172; on right of suffrage, 183; on jury system, 254
Politics, influence of business upon, 200; capitalism a determining force in, 223
International. See International relations
And religion. See Church and state
INDEX

Poor, political disadvantage of the, 197
Pope, the, comparison of Supreme Court with functions of, 98
Popular control of political power, 186-201
Popular sovereignty, in relation to constitutions, 60, 79; governmental supremacy under guise of, 113-61; early belief in, 164. See also People, the
Population, representation based on, 61, 66, 73, 117
Porter, Kirk, cited, 30
Porto Rico, political status, 233
Power, a menace to international peace, 241
Preparedness, Military. See Militarism
President, war powers, 144
Prices, 204; power of capital to fix, 226
Production restricted to increase profits, 217
Progress and individual liberty, 281
Progressive party, advocates woman suffrage, 42
Prohibition platform, favors woman suffrage, 41
Propaganda, 286
Property, as qualification for suffrage, 27, 50, 61, 65, 72, 131, 180; as qualification for office, 27, 30; government founded for protection of, 28, 20, 65; attitude of courts toward rights of, 104; ownership, 205
Property-holding class, opposition to democracy; to municipal ownership, 74
Prussia, suffrage system, 40, 76
Public interests, lack of support for, 199
Public officials shielded from criticism, 270
Public opinion, and the Constitution, 57, 60; as a political force, 82, 86, 114; misled in relation to authority of the courts, 101; capitalistic control of, 213, 229, 286; influence of military training upon, 216. See also People, the
Public ownership, opposition to, 74; in Prussia, 76
Public utilities, as investments for private capital, 74; local control of, 195; state control favored, 197
Radicals excluded from jury duty, 258
Ratification of constitutions and amendments, 116; by the people, 118, 127, 136; attitude of judiciary toward constitutional referendum, 118, 132, 136
Ratification of enabling acts, 118
Reapportionment of representation. See Representation
Reconstruction constitutions, 127; doctrine of equality proclaimed in, 180
Referendum, judicial opinions on, 104, 110; constitutional. See Ratification of constitutions
Reformation, 9
Reinsch, Paul, cited, 212
Religion and politics. See Church and state
Representation, apportionment of, 61-78; theories, 65; provisions of state constitutions, 61, 66; nullification of provisions, 68, 125; in foreign countries, 60, 76; federal provisions, 71; by radicals, 77; in constitutional conventions, 116; in legislatures, 117, 133; constitutional requirements, 133; reasons for disregarding, 134
Republican party, advocates woman suffrage, 42
Residence requirements for suffrage, 31, 33, 37, 131
Resources, national, ownership, 206
Revolution, as distinguished from coup d'état, 140
Revolution, American. See American Revolution
Revolution, right of, 121, 173, 274, 277; argument in defense of,
INDEX

120; now exercised by government, 143; claimed in constitutions, 156; reaction against doctrine of, 174

Rhode Island, attitude toward military service, 25; suffrage requirements in 1842, 38; in 1888, 39; attempt of the people to exercise constitution-making power, 141

Rights, natural, as check on governmental authority, 162–85; effort to discredit doctrine of, 184. See also Individual

Rousseau, Jean Jacques, 244; on the social contract, 168

Ruling class. See Class control

Rural population, over representation of, 65, 72, 77, 134

Russia, attitude of capitalistic countries toward, 249

Russian Soviet Republic, apportionment of representation, 78

Secret ballot, 45

Self-determination, 188

Senators, direct election of, 72

Slavery, abolition of, due to belief in individual liberty, 183

Slogans of World War, Influence in peace settlement negligible, 249

Smith, James Allen, Spirit of American Government, 64

Social contract theory, 13, 18, 19, 268; as main support of constitutional movement, 165; presented as history, 166; Hobbes on, 166, 177; Locke on, 167; Rousseau and Hume on, 168; conservative attack on, 171, 184; doctrine of equality implied in, 177; in Declaration of Independence, 225

Socialists, attack on competition, 227

South Carolina, Constitution of 1776, 17; suffrage requirements, 38n; method of adopting Constitutions of 1868 and 1895, 129

South Carolina Declaration of Independence, cited, 122n

Sovereignty, conception of, as unlimited political powers, 4, 277; opposition of founders to, 81, 90; early refusal to recognize, 162; distinction between state and government, 113, 147; doctrine of, 237. See also Popular sovereignty

Spanish-American War period, imperialistic propaganda, 223, 232

Spencer, Chief Justice, quoted, 31

Spiritual equality, 176

Sproule v. Fredericks, 137

State, international relations as a check on power of, 237. See also Government; Governmental authority; Natural law

And church, 4

State constitutions. See Constitutions, state

State courts. See Judiciary: Supreme Courts, state

States, control of municipal affairs, 64, 73, 188, 195, 197; relation to federal powers, 89, 93; Virginia Resolutions, 89; Kentucky Resolutions, 89, 179; limitation of powers, 90, 187; Constitution-interpreting powers, 92, 94; admission to the Union, 118; readmission after Civil War, 127; relation of Fourteenth Amendment to, 124; of Fifteenth Amendment, 125; suffrage regulations of Southern, 125, 126, 131; doctrine of equality in constitutions, 179; inability to handle general and local interests, 191; self-governing powers of, 193; public utility interests favor control of, 197

States' rights, 189, 275

Statesmanship, limited by constitutional law, 58

Statute law as distinguished from constitutional law, 150

Story, Justice, quoted, 104

Suffrage, qualifications after the
American Revolution, 15; struggle for a democratic, 27–56; property qualifications for, 27, 50, 61, 65, 72, 131, 180; state provisions for; opposition to, 28; residence requirements, 31, 33, 37; educational requirements, 39; method of voting, 45; English laws, 48; veto power of House of Lords abolished, 49; indirect results of extension, 57–78; efforts to minimize democratic effects, 61, 65, 72; opposition to extension in cities, 62; restrictions in the South, 125, 126, 131; right of, should be a constitutional guarantee, 133; denied to inferior races, 181, 183; effect of doctrine of equality upon, 182; no longer held a natural right, 183; influence of, upon local government, 190, 195. See also Representation, apportionment of Supreme Court, constitution-interpreting power, 97, 101, 111, 186; popular conception of; functions compared with those of Pope, 98; judges, 100; centralization of authority in, 101; decisions cited, 103, 104, 136, 148; legislation nullified by, 104; misinterpretation of the Constitution, 111; decisions in favor of corporations, 125; attitude toward disfranchisement of the Negro, 126; decisions, cited, 142; Wilson on, 150; power to veto verdict of jury, 262. See also Judiciary Supreme courts, state, attitude toward rights guaranteed by constitutions, 136; decisions cited, 137 Switzerland, voting system, 54 Taxpaying class, opposition to democratic suffrage, 62, 72; to municipal ownership, 74 Taxpaying tests for voters, 131 Taylor v. Commonwealth, 137 Temperance legislation, referendum on, 105 Temporal power, deification of, 269 Textbooks, on subordination of government to people, quoted, 152; on right of suffrage, 183 Theological speculation, influence on constitutional movement, 3–11 Treaty-making power, 146 Trial by jury. See Jury, trial by Trusts, power to fix prices, 226 Unemployment diminishes buying power of labor, 217 United States, territorial expansion, 223, 233; lack of freedom in, 283 United States Supreme Court. See Supreme Court Van Buren, Martin, quoted, 34 Van Ness, Judge, quoted, 63 Van Vechten, Abraham, quoted, 63 Vermont, Bill of Rights, provision for suffrage, 28 Veto power of the judiciary, 95–112, 113; attitude of economists toward, 150, 151, 155, 160 Virginia, suffrage requirements, 38; compulsory voting, 54; method of adopting Constitution, 129, 137 Bill of Rights, proposal regarding standing army, 25; provision for suffrage, 28; declaration of equality, 180 Resolutions (1798), quoted, 89 Voters. See Representation: Suffrage Voting, method, 45; laws safeguarding secrecy of ballot adopted, 47; plural, 48; compulsory, 53 Wages, 204 War, suspension of constitutional guaranties during, 144, 146; power to declare, 144; need for safeguards against, 244
INDEX

Wars, capital responsible for recent, 221
Washington, state, apportionment of representation in, 68n
Wealth, political power of organized, 198; distribution of, 202, 226
White supremacy, doctrine of, in state constitutions, 181, 183
Williams v. Mississippi, 126, 136
Willoughby, W. F., quoted, 152
Wilson, James, 98
Wilson, Woodrow, plan for League of Nations, 145; on constitutional government, quoted, 149
Woman suffrage movement, 40
World War, effect upon imperialism, 219
Wyoming Constitution, declaration of equality, 182