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THE GOVERNMENT OF THE UNITED STATES

by

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Remarks by Lt. Colonel W. A. McCain  
Director, Army Industrial College,  
introducing  
Dr. Charles E. Hill.

Gentlemen:

Following his A. B. and A. M. from the University of Michigan and his Ph D. from Harvard, Dr. Hill continued to specialize in political science, history, government and the like. He was professor of Government and History at the Kansas State Normal School and, later, supervising principle of Public Schools in Pasadena, Calif. He came here to the George Washington University in 1916, was made professor in 1918 and became Dean of the Columbian College in 1928.

In addition to his college duties he has performed a great deal of work on the outside. He has done some expert work for the U. S. Tariff Commission and for the Committee on the Revision of Laws of the House of Representatives. He is a professor of the Post Graduate School of the U. S. Naval Academy. He is an author of distinction on United States history. He is a member of more societies and associations than I can here recall.

I have the honor to present Dr. Charles E. Hill.

Lecture  
THE GOVERNMENT OF THE UNITED STATES  
by  
Dr. Charles E. Hill.

Colonel McCain and Friends:

I am to talk to you about some of the elementary phases of American Government, particularly the introductory period from 1776 to 1789. I have in mind drawing some conclusions at the close that may be of a theoretical nature.

The greatest event in American history is the Declaration of Independence. In a sense it set the course for our future development - development territorially, and expansion from the few settlements along the Atlantic seaboard westward across the Mississippi, across the Rockies to the Pacific, including Alaska, Hawaii, the Philippines and the Canal Zone. Not only that but it furnished the basis for our growth in an industrial way - the development of our business organizations, the development of our ideals in art, literature, and even in religion.

This Declaration of Independence has had a pertinent influence upon our neighbors, particularly in Latin America. Some of those Latin Americans fought in our Revolution, and it was due to our ideas expressed in the Declaration that they broke away from Spain, and that Brazil separated from Portugal. The Declaration had its recurring influence in European history in the French Revolution and in the revolutionary waves that swept Europe in 1830 and in 1848. It had its influence upon England herself. It taught her a lesson in government. The idea occurs to me now (I have not checked it) that Great Britain has not lost any colonies since that time. That may or may not be correct. However, the Declaration did furnish the basis for the Statute of Westminster passed a year ago which gives to Australia, New Zealand, South Africa, Canada, the Irish Free State, etc., an equal position in the British Commonwealth of Nations with that of Great Britain herself. John Bassett Moore in his book, "Principles of American Diplomacy" mentions on the first page that even today we are unable to foresee the far-reaching consequences of the Declaration of Independence.

This Declaration was passed by the Second Continental Congress. The delegates had been called for the purpose of listening to replies to the petitions that had been sent out by the First Continental Congress particularly the petition to the King and the reply which the King would furnish. As you know, he sent an Army and a squadron of the Navy. In consequence the delegates had to provide for the exigencies of the occasion. So they provided for an army, commissioned Washington Commander-in-chief and created a Navy in which John Paul Jones achieved distinction. They raised money largely by printing batches of paper money; they advised the states to form state constitutions; they took charge of our foreign relations, commissioned Franklin to go to Paris to negotiate treaties with France. They made a treaty with Holland, and they drafted the articles of Confederation which served as the first Constitution of the United States - the second Government of the United States.

The government under the articles, was a curious one. The Americans had been suspicious of central authority, consequently they did not want an official corresponding to a king who could act in the way George the Third had acted; so they had no independent executive. The Speaker of the House served as President for ornamental - social purposes only. There was no independent judiciary; a rudimentary one, made up of members of Congress, settled disputes between the States. Several disputes came up but only one was settled by the Court - the one between Connecticut and Pennsylvania about the Wyoming Valley, near Wilkes-Barre in Pennsylvania.

In this Congress there were an equal number of delegates from each state but each state had only one vote. It required the vote of nine states to pass a law and a vote of all thirteen to amend the Articles of Confederation. They were never amended. Most writers speak of the inability to levy taxes as the chief weakness of the Articles of Confederation. In a sense that is true because money furnishes the sinews of government. Historically, the chief weakness of the Articles consisted in the inability to regulate interstate and foreign commerce, coming to a head between Maryland and Virginia about the navigation on the Potomac River. As you know, the Lord Baltimore Grant extends to the Virginia shore of the River. The result was that if a vessel lying in the Potomac took on Virginia tobacco and corn, those commodities were subject to taxation by the State of Maryland as soon as they were placed on board. Virginia retaliated because she controlled the two capes, Charles and Henry. The vessels had to go between them. This went on for many years. Finally some of the far-seeing men of both States saw that it would not do to continue in this way indefinitely. Madison was particularly eager to reach a settlement. He talked it over with the Governor of Virginia; who asked him to see the Governor of Maryland. The Governor of Maryland seemed receptive and replied that it would be a good thing to have a convention to meet in 1785 to settle the matter. This convention met at Alexandria and the delegates wrangled for several days. One afternoon George Washington rode up, went in, listened and saw the course of events. He arose and said that he and Mrs. Washington would like to have them come to Mount Vernon for dinner the following evening. On this, curiously, they agreed and accepted the invitation unanimously.

How many in this room have been to Mount Vernon? I am glad that you all have, and I hope you have stood in the doorway of the dining room. I am sure General and Mrs. Washington put before them a worthy repast. When you were there you might have noticed that big hamper of bottles. Washington had the wherewithal to thaw out their animosity. Having achieved this purpose he proceeded to tell them that the regulation of interstate and foreign commerce was not one that concerned Virginia and Maryland alone, it concerned New York, New Jersey, Connecticut, Rhode Island, and Massachusetts, and it might be wise to call a national conference to settle this question.

They agreed to call a national convention to meet in Annapolis in 1786. There were delegates from five states only. The leading ones were Hamilton and Madison. They said they could not very well act for all of the thirteen states so they agreed to

meet again the next year at Philadelphia and in the meantime do all they could to bring about the sending of delegates by all of the states. They did so and all of the states sent delegates the next year except Rhode Island.

Instead of surveying the work of this convention through the plans that were submitted and the compromises that were reached, I would like to submit to you five or six names of the leading delegates. I am quite certain that no two of us would agree on who they would be. I should like to submit my list, however.

At the head I would put General Washington, not only because of the Service he rendered during the Revolution but because he served as President of the convention, presiding most impartially throughout. Secondly I would mention James Madison, now called the father of the Constitution because he had written the Virginia Plan which was very largely incorporated in the Constitution. Thirdly, Benjamin Franklin - hardly second to Washington in the service which he had rendered to the country in obtaining the recognition of France and the assistance of the French Navy and of the Army. Without that we probably could not have achieved our independence. He was an old man - over 80 years of age. He did not contribute very much to the document itself but served as a peace-maker in the convention.

Fourthly, I would mention James Wilson, of Pennsylvania, a Scotchman, educated at St. Andrews and Edinburgh - next to Madison the greatest scholar in the convention. Whenever a question arose as to whether a principle of government had been tried in Greece or Rome, in France, in Great Britain or elsewhere, Wilson could explain how it had worked and how it would probably work in the United States. Fifth, Gouverneur Morris, the one who gave the phraseology to the document - a rather good piece of composition, I think you will admit. I understand you have as part of your study the reading of Machiavelli. Of all those men in the Constitutional Convention Gouverneur Morris was more like him than anyone else; like him in two respects - that he read books in order to understand men and women better, and he knew how to use his mother tongue with idiomatic precision. Sixth, I would have chosen Thomas Jefferson had he been there. He was serving in Paris at the time. John Adams was serving at the Court of St. James. We might take one of the Pinckneys of South Carolina. Maybe Luther Martin of Maryland. Possibly Alexander Hamilton of New York or Rufus King of Massachusetts. The one I prefer to pick for sixth place is William Patterson of New Jersey, the supporter of the old Articles of the Confederation. He was willing to have them amended so the United States could collect taxes and regulate interstate and foreign commerce. He conceded also that there should be a president and a rudimentary judiciary, but there should only be one house of Congress and equality between the states in that house. I would like to include him because he was the leader of the lost cause and because he played his part in a sportsmanlike way. When he was voted down he yielded and if you will look at the original document in the Library of Congress you will find his name affixed to it. We tend to underrate the leaders of the lost causes. I think that

is true of John C. Calhoun, of Robert E. Lee, and of Jefferson Davis, as well.

Now I would like to draw some conclusions about the work which was done by these men at Philadelphia. They had in mind the establishment of three coordinate departments. They took this from the French jurist Montesquieu who was exiled from France and went to England. He admired the English system of government and wrote two volumes on it. He thought he gave an accurate description of what he saw in England, and that there were three coordinate departments. He did not realize that England already had parliamentary supremacy at the time. His mistake had its effect in our Constitution. You have the three separate articles for the legislature, executive and judiciary, and by interpretation of the courts these three departments are considered coordinate. It was not thought by the members of the convention that the three would be equally important, equally influential; it was rather thought that the legislative would be the most important. Consequently, it was mentioned first. That was the position of the colonial legislatures and the position of Parliament in Great Britain. Woodrow Wilson when he was teaching at Bryn Mawr wrote his book on Congressional government. He thought then that Congress was the most important branch of our government. I am inclined to think that when he became President he thought the Presidency was the most important. It has grown relatively more than the other two departments.

The power of the courts to declare statutes unconstitutional if they do not harmonize with the Constitution is not mentioned in the Constitution itself. The power is not one that is granted specifically to the courts. James Wilson, who served in the Convention and afterward served as Associate Justice of the Supreme Court, states that the Convention had it in contemplation. Anyway, the courts have found sufficient basis for assuming that power and have proceeded to exercise it from the time of Marbury vs. Madison down to the present.

The Convention provided for hard money. The men of the convention were men of property. They had had more experience than they wanted with depreciated currency. You know that the Constitution provides that Congress can coin money. Nothing is said about the issuance of paper money. Not until after the Civil War did the courts permit issuance of paper money in time of peace. This is one of the noteworthy instances of the Supreme Court reversing itself.

It was not mentioned in the Constitution that usage would form such a large part in the changing of the Constitution. We have the provision for amendment, we have the change in the Constitution through judicial interpretation, but probably more, we have the change gradually through custom. I will mention a few instances.

It is pretty well established that the President may not have more than two terms in office. The meeting of the Cabinet and its influence is based upon custom. The work of the presidential electors in carrying out the wishes of their constituents is based upon custom. Political parties themselves grew up as a matter of practice. Washington felt there should be no political parties in the country; that they were an unsound, disintegrating influence and it would be better

to have the differences ironed out in the cabinet. That is why he brought in as Secretary of State Jefferson, and Hamilton as Secretary of the Treasury. It was not long, however, before he had to give up this desire to iron out the differences and accept the resignation of Jefferson. In this regard he is not unlike Prince Bismarck in Germany who also thought he could rule without political parties at the beginning of the Empire.

Another feature recognized in the Convention and afterward in the first amendment was the separation of church and state in our country. The United States was one of the pioneers in this direction. I have just read Norris' History of Annapolis, and maybe I can, with the help of that, show how it was brought about. He mentions that the Reverend Doctor Boucher was the rector at St. Anne's Church. He was a friend of Washington, who brought his step-son to be educated by him. When the Revolutionary movement broke Dr. Boucher became rabid in support of the Loyalist cause. Not only did the legislature of Maryland confiscate his property but he was brought to trial and convicted of treason. He was given a chance to leave, which he apparently did with alacrity. But the clergy of the established church pretty generally supported the Loyalist cause in opposition to the Patriot movement. It was one of the chief reasons why Jefferson was instrumental in having the legislature in Virginia pass the statute of religious liberties and why the Convention provided for the separation of church and state. In fact I am not sure but that it was because the Sultan in Turkey used the Mohammedan Church as a means of maintaining himself that caused Mustapha Kemal to bring about the separation of church and state. The way the Czar dominated the Greek Orthodox Church may have been the reason in Russia for Lenin to bring about the separation of church and state. The support given by the Catholic Clergy to Alphonso XIII may have been the reason for the separation of state and church recently in Spain. Perhaps a similar reason existed in Mexico in 1916.

My teacher of Constitutional Law, Professor McLaughlin, mentioned repeatedly that the greatest find of all made by the delegates in the Constitutional Convention was the provision for the oath of office. Not only are Federal officials sworn to support the Constitution of the United States but all the state officials are obliged to swear to support it, and that is what keeps the states from infringing upon each other and from infringing upon Federal powers. It keeps them functioning within their proper spheres of authority.

One of the biggest changes between the Constitution and the Articles of Confederation was in the source of authority. The Constitution rests on the individual instead of the states. I will assert rather baldly that the United States cannot coerce a state and I shall draw some circles on the blackboard. They are not original with me, Burke A. Hinsdale of Hiram College probably started them. This one represents the United States and this one, overlapping it because there are some concurrent powers, represents a state. Over here we have a small circle representing Captain

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Bogman. He is a citizen of the U. S.; he owes allegiance to the U. S., and the U. S. owes protection to him. He is a citizen of the state of Georgia, so he owes allegiance to Georgia and Georgia owes protection to him. The U. S. has full authority over the war power, the making treaties, over money-making, over bankruptcy, and a large number of powers. Georgia has full control over the marriage relations, over the relation between parents and children, over commercial paper, over education. There is no way by which the U. S. can coerce the state of Georgia.

That problem has puzzled several Presidents, Jackson and Buchanan particularly. When South Carolina passed the nullification ordinance Jackson did not seek to coerce the Governor. He sent troops to maintain the citizens in their proper allegiance to the U. S., and thereby held South Carolina. In Buchanan's time, South Carolina seceded from the Union. One of the members of his cabinet asked why he did not send troops down to hold it in the Union. He said "I have read the Constitution with care and nowhere do I find the President is authorized to call out troops against a state." He was right, but he failed to see the whole situation. Lincoln had Jackson's view of holding the citizens and thereby holding the states.

Perhaps that is enough of theorizing. I should have mentioned the purposes of government. I am going to dispose of that rather quickly by listing the purposes given in the preamble of the Constitution: to establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and our posterity. Nowhere can you find the purposes better stated.

I am grateful for your kind and generous attention.

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Colonel McCain:

I think that you will all agree that Doctor Hill has given us something of value, but he stopped talking too soon. Are there any questions?

Q. Would you care to forecast what might happen to Russia and Italy because of only one party?

A. I imagine I would hardly be here if I could do that. There is only one party permitted by law in Italy and only one in Russia. We shall be interested in seeing the outcome. At present they seem to be functioning pretty well.

Q. You spoke of the increase in importance originally attached to the three coordinate agencies of the government, namely, the executive in comparison with the legislative. Is there anything significant in the establishment of so-called bodies of concurrent jurisdiction between Congress and such agencies that report to Congress through the President, - the Comptroller General and such?

A. It is significant in showing the growth of power of the President. You are familiar with the Myers case in which you saw the President has the power of removal from office. The President has absolute power of removal and that has enhanced his importance greatly. In connection with the Tariff Commission, the Interstate Commerce Commission and the Federal Trade Commission, those members are responsible not to Congress but to the President. Of course Congress has hedged

about considerably in connection with the Comptroller. It would seem to follow from the Myers case that he could dismiss the Comptroller. He has not attempted to do so.

Q. What is the attitude of Congress toward this? Does not it feel that its powers have been materially broadened by these agencies of concurring jurisdiction? The chart of government shows these agencies and their concurring jurisdiction.

A. Congress does believe that its powers have been broadened. Perhaps I ought not to say "Congress"; individual members of Congress think they have. The powers that are exercised by these different bodies are administrative in character and come within the scope of executive discretionary powers. Congress prescribes the upper and lower limits within which the agencies can operate.

Q. You did not mention Alexander Hamilton among your six men.

A. Quite true. In the first place Hamilton did not attend regularly. In the second place he was outvoted by Yates and Lansing, the other two members of the New York delegation. He presented a plan of his own - a very radical plan. He was one of the youngest men in the convention. In my estimation he does not rank among the six. His great service to the Constitution came afterward in connection with the ratification in New York.

Q. In the last few years there seems to be a tendency toward the block system in our legislative body. I believe on several previous occasions Congress has been of a different complexion than the Executive but I do not know if the block system has ever been in effect in our government previously. Have we ever had any trouble over that?

A. If I understand the question correctly it is representation of various interests in Washington through lobbies before members of Congress. Is that it?

Q. I refer to the block in Congress itself representing these various bodies.

A. We have had those at various times; the Free Soilers, the Free Silverites, and the Populists. We sometimes think our troubles are more pressing than those of other generations, but if you will read what they have had to say you will find that they felt them just as keenly as we do. I do not believe the block system is making much trouble. The tendency in other Governments is to give more representation to blocks. The Fascist government is built on that principle. That is true in Russia and to some extent in the new German Constitution. What we probably need to do is to give more of a voice to the disinterested public. These representatives of the different blocks make themselves felt in our two houses of Congress but the disinterested citizen is not represented adequately.

Q. Do you think it was the intention of the framers of the Constitution to have senators appointed or have them elected as they are now by popular vote, or do you think that change was a salutary one and did not the senators fulfill the same functions as representatives?

A. It clearly was not the intent of the fathers in the convention

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to have them elected as they are now, That is Hamilton's contribution - he wanted them to be selected by the state legislatures. In his plan the President was to be elected by electors and to serve during good behavior. The judges were to serve as they do now. He desired a rule by the well-born. Whether the change has been a salutary one varies with the individuals. The other day I stepped into the Supreme Court Chamber which was the Senate Chamber before the Civil War. The marshall showed me through with enthusiasm. He showed me where the senators sat before the Civil War - where Webster sat, where John C. Calhoun sat; Henry Clay's seat and Sam Houston's. I asked him if we had as good senators as we had then. He said he did not think so. Maybe we donot see them in the same perspective to-day. The change has been brought about and it seems to function pretty well.

Q. About that theory of the circles and Andrew Johnson. Was it not his standing on that point that almost caused his impeachment?

A. It had a great deal to do with it.

Q. The Declaration said all men are created equal - not free and equal. I cannot help but wonder that they said all men are created equal because at the time they were holding the negro in slavery and kicking the Indian all over the country. I wonder what they really meant.

A. I may have an idea as to what they did not mean. Of course, Jefferson wrote the Declaration of Independence, but he did not have in mind equality in the sense which I think Colonel McCain has now. The equality of men and women for instance - that was not in Jefferson's mind, nor was equality between the negro and the white man. Jefferson may have had in mind the equality of men of the English race, a theoretical legal equality without taking into account the procedural features of the law.

Q. In reference to the establishment of our three-part form of government - I have just read a statement about parliamentary governments in general. It said that form of government was most effective in countries largely made up of a landed gentry, a poor class but small, and a small class without franchise. In view of the fact that our own country had so much difficulty in giving franchise to many elements does it not appear remarkable that we do not tend more to the parliamentary form of government which England had. I cannot visualize why we want a three form of government when the national economy was based upon the wealthy land holding people.

A. You have implied the answer to the question. The antipathy of the Americans for the parliamentary system needs to be mentioned. They had had experience with parliament - most unfortunate experience. They did not understand parliament and parliament did not understand the American ideas. The experience of the Americans you see had come up through the colonial era and a great deal in the Constitution is due to the experience of that period, and also to the experience of the individual states. Massachusetts in its Constitution of 1780 had that three departmental system. John Adams had been reading Montesquieu.

Q. Our government functions so largely in the hands of lawyers we are given to believe that the law is based on precedent and decision. Is it your belief that the Supreme Court has been guided by law and precedent in its decisions or more by policy as it would seem?

A. My view is that the Supreme Court is the embodiment of the reign of law and is guided by law. In a few instances there have been questions of policy but they have been subordinated to the legal. The Court has incurred a great deal of unpopularity because it stood

by the law. I think that was brought out in the Dred Scott case and in connection with the child labor cases. The Supreme Court was unduly criticized in these instances.

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Colonel McCain:

Doctor Hill, we are under great obligation to you for a most interesting talk and for the time you have given us in answering our questions.