

Why We Have Outgrown the United States Constitution (September 1911)

The convention of 1787, held in Philadelphia, which framed the Constitution of the United States and adopted that instrument on September 17 of that year, consisted exclusively of what Hamilton, one of its dominating spirits, called “the wealthy, the well-born, and the great.”¹ There was no workingman present to degrade its councils. labor was held in contempt, unfit to have a seat among the aristocrats who composed that body and controlled its deliberations.

Neither was there a woman among the delegates to ruffle the dignity of the grave and revered “fathers of the Constitution.” It was a place for the wise and mighty, and for powdered wigs, velvet knee breeches, silk stockings, and silver shoe buckles.

The democratic spirit so defiantly expressed in the Declaration of Independence, and which had sustained the patriots during the dark days of the revolutionary war had largely subsided, and nothing was further from the purpose of the delegates than that the government they had met to establish should be controlled by the people. As professor J. Allan Smith remarks in his *Spirit of American Government*:

It is difficult to understand how anyone who has read the proceedings of the Federal convention can believe that it was the intention of that body to establish a democratic government. The evidence is overwhelming that the men who sat in that convention had no faith in the wisdom or political capacity of the people.²

The Constitution itself furnishes sufficient evidence of that fact. it is not in any sense a democratic instrument, but in every sense a denial of democracy. The Declaration of Independence had been democratic and revolutionary; the Constitution, however, was autocratic and reactionary.

Only six of the 56 signers of the Declaration had a hand in framing the Constitution. Patrick Henry, Thomas Paine, Thomas Jefferson, and Samuel Adams were not in the convention. Jefferson bitterly opposed the Constitution as finally adopted, and Henry openly denounced it.

Woodrow Wilson was right in declaring that the government was established “upon the initiative and primarily in the interest of the mer-

cantile and wealthy classes,” and that “it had been urged to adoption by a minority, under the concerted and aggressive leadership of able men representing the ruling class” — and he struck the keynote of the Constitution when he said that the convention that framed it was backed “*by the conscious solidarity of material interest.*”³

There is not the slightest doubt that the Constitution established the rule of property; that it was imposed upon the people by the minority ruling class of a century and a quarter ago for the express purpose of keeping the propertyless majority in slavish subjection, while at the same time assuring them that under its benign provisions the people were to be free to govern themselves.

A democracy in name and form — a despotism in substance and fact!

And this stupendous delusion has not yet lost its magic power upon the people, a great majority of whom still believe, in their mental childhood, that the “Constitution of the fathers” established democratic rule, and that we are a free and self-governing people.

Admitting for the moment all that its most zealous devotees claim for the Constitution as an “inspired instrument,” that it embodies all the wisdom and statesmanship of the age in which it was written, the fact still remains that it is now antiquated and outgrown, and utterly unsuited to the conditions and inadequate to the requirements of the present day. So palpably is this fact in evidence that we see the Supreme Court, the specially constituted authority to construe the provisions of the Constitution and preserve inviolate its reputed integrity, ride roughshod over the “inspired instrument” and by judicial interpretation make it serve, as it has from the beginning, the class in power. And to accomplish this essential service under capitalist class government the Supreme Court contemptuously ignores and defies the sacred “Constitution of the fathers” by boldly usurping the power not only to construe it absolutely to suit themselves and serve the ends of the ruling class, but by deliberately invading the domain of the legislative, virtually destroying a coordinate branch of the government created under the Constitution, and annulling, wiping out utterly, laws enacted by the elected representatives of the people.

Constitutions, like the times and conditions in which they originate are subject to the everlasting laws of change. Evolution is no more a respecter of a Constitution than it is of those who make it.

In 1787, when the Constitution was adopted, the population was about 3 million, and agriculture and mercantile interests dominated the

colonial life. Today the population is 100 million, and capitalized industry controls the government and shapes the national destiny.

There has been a complete revolution in the methods of producing, distributing, and exchanging wealth, the essential means of life, and a corresponding revolution in the industrial and social life of the people. The ruling class of the colonial era has vanished as a class as completely as have those who composed it. And the Constitution they adopted is just as completely out of date as would be its makers if by some magic they could appear upon the present scene. In their day the ruling class consisted of small landowners, petty merchants and traders, and professional persons who made up what was known as the "official class."

The actual workers and producers were still in a state of semi-feudal servility, an inferior element, and practically without voice in the affairs of government. But there were no hard and fast lines between the classes of that day, nor any sharp antagonisms to bring them into violent collision and to array them against each other in hostile conflict.

In the century and a quarter since elapsed there has been an overwhelming industrial and social transformation. The weak and primitive agricultural colonies of that time have become a vast and powerful industrial nation. There is now a sharply defined capitalist class and an equally sharply defined working class. The struggle between these modern industrial classes is growing steadily more intense and reshaping and remolding the entire governmental structure and social organism. Political government has had to give way to industrial administration, and the old forms, including the Constitution, are now practically obsolete.

Political government, its constitutions and its statutes, its courts, its legislatures, and its armies, scientifically considered, are institutions under class rule, expressly designed to establish the supremacy of one class and enforce the subjugation of another class. With the end of class rule political government will cease to exist. Its functions, which are essentially coercive, will no longer be required.

With the overthrow of the capitalist class and the installation of the working class in power (which must be the inevitable outcome of the present struggle), the government of political states will be superseded by the administration of national industries.

In discussing the United States government and the Constitution, Professor J. Allen Smith, already quoted, correctly concludes that "this complex system of restrictions which is the outgrowth and expression of a class struggle for the control of the government must necessarily disappear when the supremacy of the people is finally established."⁴ The

present Constitution was not designed to establish but to prevent the supremacy of the people. It is outgrown, obsolete, dead. Industrial and social development are not halted by it, but these forces sweep past it with scant regard for its ancient and musty respectability.

Politicians and legislators are today the representatives, not of the people, but of the trustified capitalist class. The government is essentially capitalistic, as is also, of course, the Constitution to the extent that it is still vital and has any binding effect at all.

The working class is now the rising class and will soon be the triumphant class, and then the capitalist state will be superseded by the working class commonwealth, and industrial despotism by industrial democracy.

The old Constitution will have its place in history and will serve its purpose in the study of governmental evolution and class rule, and among the inspired relics of a past age. It is a class instrument, inspired by class interests, and will survive only to mark a historic epoch in class rule.

The new Constitution will not be framed by ruling class lawyers and politicians, but by the bona fide representatives of the working class, who in the day of their triumph will be *the people* in the complete sense of that magnificent and much maligned term.

And the representatives of the working class will consist of women as well as men, sharing equally the rights and duties, the privileges and opportunities of the councils of state, and they will smile indeed as they look over with pitying toleration the "Constitution of the fathers" and recall the convention in secret session that framed, in blissful ignorance that toilers and producers were citizens, and that women are also included in *the people*.

The new Constitution will be framed by an emancipated working class with the sole object of establishing self-government, true democracy, conserving the freedom and security and promoting the happiness and well-being of every man, woman, and child.

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¹ From Publius, "To the People of the State of New York," in *The Federalist* No. 85 (May 28, 1788).

² J. Allen Smith, *The Spirit of American Government: A Study of the Constitution: Its Origin, Influence, and Relation to Democracy*. New York: Macmillan, 1907; pp. 30-31.

³ Woodrow Wilson, *Epochs of American History: Division and Reunion, 1829-1889*. Albert Bushnell Hart, editor. New York: Longmans, Green & Co., 1893; pp. 12-13.

⁴ Smith, *The Spirit of American Government*, p. 126.