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"THE CONSTITUTION AS A LIVING DOCUMENT"

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An Address

by

HONORABLE HOMER CUMMINGS  
ATTORNEY GENERAL OF THE UNITED STATES

Delivered at the Banquet

of the

Polish National Alliance of America

at the

Wardman Park Hotel

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and

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of

The National Broadcasting Company

at

9:00 P. M.

Mr. Toastmaster, Mr. Ambassador, Members of the Polish National Alliance of America, Distinguished Guests, Ladies and Gentlemen:

Tonight we honor a great Polish patriot, Casimir Pulaski. He was a friend of Washington and a friend of liberty; and he died while fighting for the independence of our country.

Across a century and a half of time, we salute his memory and nourish our spirits at his shrine.

During the crucial years when the Thirteen Colonies were struggling to establish a new nation, men of liberal thought came from across the seas to render aid. Amongst them were many of Polish origin whose names occupy a sacred place in the annals of our country. To them our hearts are ever grateful.

This, however, is not the only tie that binds us to the Polish people. Our population contains multitudes who are of Polish descent, and who have contributed an indispensable asset to our national life.

There are other bonds that unite us. The United States and Poland are republics; and both are governed under a written form of fundamental law.

This year we celebrate the 150th Anniversary of the adoption of the oldest existing written constitution, the Constitution of the United States. Let us briefly consider why it has endured for so many years and why it is still a living and vital document.

Its permanence lies chiefly in the fact that it is couched in broad, general terms, happily called "the language of statesmen," and is

capable of being adapted to changing conditions. The Founding Fathers realized that it was impossible for human beings of one era to foresee all of the problems that would be confronted by later generations. With prophetic vision they drafted a document that Chief Justice Marshall asserted was "intended to endure for ages to come, and consequently to be adapted to the various crises of human affairs." Justice Story, another profound jurist, observed that it "was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence."

If our fundamental charter had been framed like a rigid, detailed code, incapable of adjustment, it would have long ago been broken into fragments; for Life has a way of disregarding forms and cannot be cast into a rigid mold.

Recent constitutional discussions have been highly educational and broadly helpful; but they have also stirred emotions that have clouded the clear course of legitimate debate. There are those who apparently regard the Constitution as embalming forever the explicit and final word of wisdom; and who feel a distaste for any critical debate as to its merits or its possible defects. They have forgotten that the Constitution is a human document formulated to serve human needs; and that it is the servant and not the master of those who created it. Intelligent, temperate debate is the essence of free government, and it would be unfortunate indeed if the Constitution ever came to be regarded as so sacred that it could not be discussed.

Every era of our national existence has been productive of some sort of constitutional struggle. These recurring controversies are but renewals of old debates and will have their counterparts in the days to come; and, indeed, so long as our government endures. Such disputes are the by-products of the processes of growth and are evidences of life and not of decay.

There have been many historic occasions upon which the interpreters of the Constitution and those who were seeking to apply it in a practical manner came into collision. In each instance the conflict was resolved so as to meet the requirements of the generation in which it occurred, sometimes by a reversal or modification of opinion on the part of the judicial body possessing the power to construe the Constitution; and sometimes by the drastic process of Amendment.

Not long after the Civil War, the Supreme Court, in the so-called Legal Tender Cases, held that the monetary system set up by the Congress, and which in part persists to this day, was unconstitutional. Had that decision stood, the devastating consequences would have been incalculable. Fortunately, as the result of a change in personnel of the Supreme Court, that tribunal reversed its former decision, and the national life flowed on again.

In 1895 the Supreme Court, by the narrow margin of one vote, held that the Congress was without power to levy an income tax. This unfortunate decision aroused widespread public indignation. It was finally overturned by the adoption of the Sixteenth Amendment, which, in 1913, became a part of the Constitution. This process, however, consumed a period of

almost twenty years, during which time the Federal Government was deemed to be without authority to employ a form of taxation which is generally regarded as the most equitable means of distributing the financial burdens of Government and without which no modern democracy could function.

In 1923 the Supreme Court, again by the narrow margin of one vote, held that the Federal government was without authority to regulate minimum wages for women in the District of Columbia. Thus, the due process clause adopted to shield the weak, became a sword in the hands of the strong. Fortunately, the Supreme Court reversed itself only a few months ago. And yet, for a period of almost twenty years, the Congress and the State Legislatures were deprived of an essential governmental power by a decision now held to be without warrant.

In 1918 the Supreme Court, by a divided decision, held that although the Congress was authorized by the Constitution to regulate interstate commerce, it might not invoke that power to exclude from the channels of interstate commerce the products of child labor. That decision still stands. Whether the more liberal attitude which the Supreme Court has been exhibiting of late will result in a frank reversal, or whether nothing short of a Constitutional Amendment will serve our needs, time and time alone can tell.

The events to which I have alluded indicate the practical difficulties in adjusting our governmental machinery to the exigencies of current existence.

We are living under conditions far different from those with which our forebears were familiar. Benjamin Franklin took a week to go from New York to Philadelphia and found the trip wearisome and full of hazard. Now we travel from coast to coast overnight.

A century and a half ago our society was largely agrarian. There were no large industries. The machine age had not come into being and the few manufacturing enterprises then in existence were conducted by manual labor and upon a small scale. The individual workman and his employer could bargain face to face and in intimate fashion.

Life has moved on and the scene has changed. To assure the modern farmer against the vicissitudes of wide price fluctuations; to guard the wage earner against oppression in the matter of wages and hours and working conditions; to prevent the exploitation of the labor of little children; to protect the public against monopolistic practices; to cleanse our country of crime; to raise the standards and dignity of the life of our people - these and countless other problems have widened the scope and, indeed, altered the tempo and functions of government. Nearly all our problems have spilled over state lines. The forty-eight states, spread from the Atlantic to the Pacific, are closely knit together into a single unified economic fabric. As never before we think as a nation and must, of necessity, act as a nation. In short, our modern problems are commensurate with our modern needs.

That such needs must and will be met is as certain as that we are gathered here tonight. We have but scant patience with those who believe that the Constitution is an unworkable document, and we are not moved by those who, in sheer blindness, strive to make it an unworkable document. It has served and it will continue to serve. The Constitution is not a stranger to justice. On the contrary, it is an instrument of justice designed, not to check or dam back the life of a great and vital people, but rather to guide and protect it as it flows down the unending channels of history.

We fervently believe that American democracy will endure, that it will justify itself in the face of a distraught world, that its problems can be solved within its constitutional framework and, so believing, we affirm again our devotion to our great charter of liberty and our faith in the destiny of our people.