

**THE COURTS, THE
CONSTITUTION, AND PARTIES:
STUDIES
IN CONSTITUTIONAL HISTORY
AND POLITICS. [CHICAGO]**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649557158

The Courts, the Constitution, and Parties: Studies in Constitutional History and Politics.
[Chicago] by Andrew C. McLaughlin

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ANDREW C. MCLAUGHLIN

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THE UNIVERSITY OF CHICAGO PRESS
CHICAGO, ILLINOIS

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THE BAKER & TAYLOR COMPANY
NEW YORK

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THE CAMBRIDGE UNIVERSITY PRESS
LONDON AND EDINBURGH

THE COURTS
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AND PARTIES

STUDIES IN CONSTITUTIONAL
HISTORY AND POLITICS

By

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PREFACE

The author of this volume believes that it includes a discussion of cardinal principles and facts in American constitutional history. The first article deals with the origin of the principle that courts can declare laws void. The second and third treat of the vital institutions, which, though not recognized by written constitutions, came into existence as opportunity was offered to realize popular government; within themselves political parties embodied the problem of popular government, for, if the people could not control the party management or the "organization," they could not make their own desires effective. The fourth article discusses the changing theories of political philosophy, which, as the years went by, furnished foundations for differing theories concerning the nature of the Union. The fifth shows that American legal order took its rise in the theory of compact and of individual right and in the belief that imperial order itself should rest on law—two theories or principles that now confront the reformer seeking to readjust social systems and to make them

conform to what he considers present social demands.

All except the first, the longest of these papers, have appeared elsewhere in print. I hope the republication is justified by their value and interest and by the fact that the five papers in combination constitute a discussion of the most fundamental problems of constitutional history. The paper on "The Significance of Political Parties" appeared in the *Atlantic Monthly* and is here reprinted with the courteous permission of the publishers of that magazine. The paper on "Political Parties and Popular Government" was given as an address before the Phi Beta Kappa Society of Indiana University in June, 1911. "Social Compact and Constitutional Construction" was printed in the *American Historical Review*. The last paper was printed in the *Michigan Law Review* and in the *Proceedings of the Fiftieth Anniversary of the Constitution of Iowa*. I wish to express my appreciation of the assistance of one of my students, Mr. Arthur P. Scott, in the search for the early court decisions, which either involved the principle that laws may be declared void or stated principles of political philosophy.

A. C. McL.

CHICAGO
August 1, 1912

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