

**CONSTITUTIONAL
LAW OF THE UNITED
STATES AS MOULDED**

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Constitutional law of the United States as moulded by Everett P. Wheeler & Daniel Webster

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EVERETT P. WHEELER & DANIEL WEBSTER

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Constitutional Law of the United States as Moulded by Daniel Webster

A PAPER PRESENTED
AT THE TWENTY-SEVENTH ANNUAL MEETING

OF THE

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TWENTY-SEVENTH ANNUAL REPORT OF THE
PROCEEDINGS OF THE ASSOCIATION.

BY EVERETT P. ^{Perrell} ~~W~~HEELER,
OF THE NEW YORK BAR.

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Constitutional Law of the United States as Moulded by Daniel Webster.

Daniel Webster was the one man in American history to whom, during his lifetime, the epithet of godlike was applied. In his case it excited no surprise. In form and feature he was like a god. The divinest of divine qualities is creative power, and that he possessed to a degree unsurpassed among lawyers. He said himself of Alexander Hamilton — "He smote the rock of the national resources and abundant streams of revenue gushed forth." It may justly be said of Webster that he touched the constitutional framework the fathers constructed and gave it life and expansiveness, so that it has continued to be adequate for the growth of the nation.

The character of the labors that fall to an American lawyer is so varied that it is impossible that any one man should perform them all. In the mother country the profession, for this reason, is divided into ranks and grades, and he who serves in one does not attempt the responsibilities of the other. As an attorney he must be a shrewd and skilful man of business; as a proctor he must be familiar with rules of navigation; as an advocate there is no height of intellectual attainment to which he may not aspire, and no resource or learning, or power of persuasive or judicial eloquence which will not aid him in his daily task.

Again, the development of our system of jurisprudence to provide for the rapid changes in the conditions of business and social life, imposes a constant duty and labor upon the intelligent and conscientious lawyer. The law which regulated the business of a few stages and canal-boats was inadequate to direct the complicated affairs of carriers by steam on land and sea. The Judge-made Code for the carriers of articles that could be weighed and measured had but a limited application to the companies who put at the service of the public the invisible force of electricity, and have made New York and Boston, Chicago and New Orleans parts of one great municipality. The English common law was well adapted to the thickly settled and compact island of Great Britain, but was insufficient, and in some particulars, illy adapted to the requirements of a people scattered over thirteen Commonwealths just formed into one Union. It is to the honor of the American Bar that its members have done so much to aid, and often to guide, the courts, in the development of the American common law.

There is yet another more arduous responsibility resting on the American lawyer, from which our English brethren are exempt. First among the nations we established a written Constitution which should be the Supreme Law of the Land, supreme over Executive and Legislature, and gave to the Courts of Justice the power to enforce its supremacy by declaring that a statute which had received the votes of both houses of Congress and the signature of the President should be altogether held for naught if it violated this supreme Constitution.

Well might we say, when we contemplate the magnitude of these labors, Who is sufficient for these things? No doubt now, as in the Apostles' time, there are many who pervert the word of God, of whose justice and equity

Courts of Justice ought to be the visible embodiment. But, also, there are many, who like St. Paul, speak in godly sincerity, and fulfil with singleness of heart the true function of the lawyer, which is to aid the Court in the discharge of its exalted and responsible office. Preëminently such a man was Mr. Webster. He became a member of the Bar at a time when many of the most important questions, since determined, were unsettled. More than any other man, he aided in their settlement.

Coleridge tells us that "The first man upon whom the light of an idea dawned received thereby the function of a lawgiver." It was because Mr. Webster, in his capacious mind, apprehended with such clearness the idea which was the soul of the novel system our fathers established, that he was able to lead our Courts to formulate this idea in their judgments.

But it may be asked, How can this be? Is it not the duty of Judges to declare, and not to make the law? In one sense, no doubt it is. The Judge ought not to depart from the principles of the law as he finds them established. But when a case comes up, as often it does, which involves a new application of these principles or a modification of rules already settled, to adapt them to a new state of facts for which no precise provision has been or could have been made, the Judge does, in a very real and important sense, make the law, and is a lawgiver as well as a Judge. If the lawyer who presents such a case to the Court is adequate to his task, he must first thoroughly understand the existing rule and the reason for it; next, he must appreciate the change in circumstances and conditions which makes this in its precise form no longer applicable, and he must possess constructive ability and be able to show how the rule as it has hitherto stood may most wisely and fitly grow to meet the requirements

of the present and of the future. No man in America ever combined these qualities to a higher degree than Mr. Webster. He understood the history and character of the mother country and the law which was the necessary outgrowth of that character and history. He looked into the very heart of the American people and realized our needs. He was able to point out the path by which we could most wisely be led to our true growth and development. With unrivalled power of making hard places easy, and dark things clear, he succeeded in impressing his own convictions upon the Courts before whom he practiced.

Even amid the absolute precision of mathematics, great minds can see what lesser minds fail to pierce. What they see they can make clear. The truths which Newton and La Place were the first to behold and develop can now be taught to college students. And Judges many times rightly and justly laid down as law what the genius of Webster perceived and demonstrated — what without the aid of that genius might have remained undetermined. Most important of all his public services was the part he took in demonstrating the true method of construing the Constitution of the country. The very fact that this was the supreme law of the land, made it all the more important that its construction should be established on the right basis.

From the beginning there was a school of thinkers who sought to limit the scope of our great charter and restrain its plain provisions within narrow bounds. It is the briefest of Constitutions. Its sections and articles never undertook to provide in detail for all emergencies which might arise, but established general rules which, fairly construed, should be adequate for every occasion. If the country were to be held in bondage to the letter and disregard the spirit of the Constitution, the purpose

stated in its preamble: "To form a more perfect Union," would fail of accomplishment.

No doubt there were thinkers who sought to give such a lax interpretation to its provisions that they might mean anything or nothing as the immediate occasion might seem to require, and no doubt the strict constructionists did good service in restraining the vagaries of such lax reasoners. The merit of Mr. Webster lay in this, that he maintained the golden mean, and in numerous arguments pointed out clearly and convincingly the evils which led to the formation of the Constitution; the objects its founders sought to accomplish and the method upon which they had, upon fair rules of construction, achieved the great end they had in view.

The recent celebration of the centennial of the accession of Chief Justice Marshall to the Supreme Court of the United States has called attention to the leading part which the decisions of that Court have played in making the nation what it is. The time has come when side by side with the great name of Marshall that of Webster should be placed. The arguments of the one were as necessary as the decisions of the other. They combined to impress upon the American people a conviction of the possibilities of the country, of the fitness of the government which they had founded to enable them to make the most of these possibilities, and above all, the conviction that the thirteen colonies had become blended into one indissoluble Union.

It is hard for us to realize in the days of our greatness the weakness and insignificance of our beginnings. It frequently happens under American institutions that a man born of the humblest parents and amid the most adverse circumstances has become a man of wealth, power and influence. But the rise of the most remarkable of them all is not more extraordinary than the

change which has taken place in the condition of the American people since the birth of Mr. Webster. He was born at the conclusion of the Revolutionary War and just before the treaty of peace was concluded between the thirteen colonies and the United Kingdom of Great Britain and Ireland. His father was one of the hardy settlers who had not found scope for their energies in the surroundings of their childhood and had gone into the forest, not only to discover, but really to create, a new world. The little house in Salisbury, New Hampshire, where Daniel Webster was born, on the 18th day of January, 1782, was the farthest north of any civilized dwelling in all the colonies. These were scattered along the Atlantic coast and the eastern slopes of the Alleghanies. They had neither money nor credit; were deeply in debt, with an army just about to disband, and whose meagre pay had long been in arrears. They lived under a confederation which gave the general government no real power, and which worked so badly that it left the colonies, at the end of the war, with less unity than they had at its beginning. The father of Daniel Webster had been a distinguished officer in the Revolution, and, in common with his comrades, had smarted under the weakness and incompetency and consequent injustice of the government of the confederation, and realized, therefore, the absolute necessity for a united and stable government if the thirteen independent colonies were ever to become a united nation.

The treaty of peace concluded at Paris, September 3, 1783, contained in its first article the following clause:

"His Britannic Majesty acknowledges the said United States, viz.: New Hampshire, Massachusetts Bay, Rhode Island & Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia."