

must not base that decision upon any presumption, based upon the mere fact of the enactment of the statute, that it is in conformity to the Constitution.

For these reasons, it is plain and is undeniable, that every court upon which Congress confers jurisdiction to enforce any statute, thereby receives jurisdiction to decide whether that statute is Constitutional and therefore valid, or is unconstitutional and is therefore void.

According to the McCardle case, Congress can deprive the Supreme Court of power to decide any such question, with the few exceptions I have mentioned. But Congress must confer that power upon some Federal court or courts on the one hand; or, on the other hand, must fail to provide any means for enforcing the statute at all.

ALBERT H. WALKER.*

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New York.

I fear that the plan suggested by your correspondent and embodied in Mr. Berger's bill, will not prove effective. I believe that if Congress should enact any statute expressly providing that the Supreme Court shall not have the power to pass upon its validity, the Court, as now constituted, would declare unconstitutional such an attempt to limit its power. The Supreme Court about forty years ago did admit the authority of Congress to thus circumscribe its powers. But consistency is not a jewel much sought after by the aged gentlemen who constitute the majority of our highest court. Only about thirty years intervened between two decisions of that august body, one declaring that it was Constitutional for Congress to enact an income tax law, and the other declaring the exact contrary.

To my mind, the only way of taking this usurped power away from the Supreme Court is to elect a President who will carry into execution a statute that has been declared unconstitutional. I think it is generally admitted that, rightly or wrongly, the vast majority of American voters believe that Congress should have the power of imposing an income tax. It looks now as though the attempt to get over the Supreme Court decision of 1896 by amending the Constitution may be unsuccessful, because of the failure to get the necessary three-fourths vote of the States. If Congress should, then, enact an income tax law, and if the Supreme Court declared it unconstitutional the President should nevertheless levy and collect the tax, what could the Supreme Court do about it? The only way it has of enforcing its mandates is through the arm of the Executive. The President is the Commander-in-Chief of the Army and Navy and appoints all collectors of revenue. He even appoints those quasi officers of the Federal courts, the United States marshals.

I believe that he would be one of the most popular Presidents we ever had who would say to the Supreme Court somewhat as follows: "You have arrogated to yourselves a power which no court in any other country ever possessed, and I declare that in doing so you have acted unconstitutionally. The duly elected representatives of the people have enacted this law; and if the people believe that the

law is not in accordance with the Constitution that is for them to say, and they will do so by recalling their recent representatives and electing men who will repeal the unconstitutional law."

F. C. LEUBUSCHER.

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Muscatine, Iowa.

The Supreme Court of the United States usurped the power of Congress when they legislated the word "unreasonable" or "undue" into the Sherman anti-trust law. Those justices who concurred in that judicial legislation violated their oath of office. For its members swore to support the Constitution of the United States, and the Constitution of the United States invests Congress (not the Supreme Court), with power to legislate.

Has the Supreme Court changed the Sherman anti-trust law? Yes, the Supreme Court has so amended that law as virtually to destroy its criminal clause. This bit of judicial legislation is in violation of the Constitution. But our Supreme Court has made it law, and law it will remain as long as Congress acquiesces in it. Congress has the power, and if this Congress does not use the power the People delegated to them, another Congress will be sent to Washington, which will maintain the Constitution against usurpations by our Federal judiciary.

JOHN M. O'BRIEN.

POPULAR VS. DELEGATED GOVERNMENT IN MAINE.

Skowhegan, Me., Oct. 3.

An unusual opportunity to contrast the workings of delegated with popular government, is afforded by the detailed returns from our late election. Question No. 4 on the ballot was the Initiated direct primary bill. This measure, indorsed in writing by more than 12,000 electors scattered throughout more than half the towns of the State, was introduced in the legislature and referred to the committee on judiciary. After the hearing, two of the Senators (Gowell and Stearns) and one of the Representatives (Davies) voted for a favorable report; the other eight (Senator Staples and Representatives Williamson, Trafton, Goodwin, Hersey, Pike, Chase and Bogue) reported, "Ought not to pass." The constituencies, however, had the last word, and they spoke as follows:

	Yes.	No.
York County (Senator Gowell).....	5,626	2,574
Oxford County (Senator Stearn).....	3,172	1,422
Yarmouth (Representative Davies).....	327	49
Knox County (Senator Staples).....	2,518	751
Augusta (Representative Williamson)....	1,533	266
Ft. Fairfield (Representative Trafton)....	158	70
Biddeford (Representative Goodwin).....	1,376	272
Houlton (Representative Hersey).....	400	116
Eastport (Representative Pike).....	369	71
York (Representative Chase).....	264	269
East Machias (Representative Bogue)...	202	165
	15,945	5,949

For the campaign preceding the election of the above named men, both the Republican and the Democratic parties had direct primary planks in their State platforms.

*Mr. Walker is the author of Walker's "History of the Sherman Law."—Editors of The Public.

Every county and practically every city and town has voted for the Initiated primary bill. The majority in favor was more than 44,000, and the Yes vote on that question was the highest on the ballot.

CHRISTOPHER M. GALLUP.

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THE GLORIOUS OCTOBER.

(From a Private Letter.)

Northern California.

It's absolutely perfect weather; I wish I could mail you a slice. It smells good and tastes good, and is fine to look at, and vitality runs out of it, and you laugh out, and quaff of the cup of life, and feel as if you saw the high gods passing on their errands and smiling as they go!

C. H. S.

NEWS NARRATIVE

The figures in brackets at the ends of paragraphs refer to volumes and pages of *The Public* for earlier information on the same subject.

Week ending Tuesday, October 17, 1911.

Revolution in China.

The Chinese anti-dynastic revolt at Canton in south China last May, and the uprising in south-west China around and in the city of Cheng-Tu last month, were noted as being apparently signs of impending revolution. Each disturbance was at least temporarily suppressed, but a great evolutionary movement for all China has evidently been in long and intelligent preparation. [See current volume, pages 61, 272, 295, 318, 342, 418, 443, 979, 1004.]

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On the 11th came news of the capture by revolutionists of the large city of Wu-Chang, and by the next day the adjoining cities of Hankow and Han-Yang were also in their hands. These three lie together in a group, in mid China, at the juncture of the Han with the Yangtse. Wu-Chang and Hankow together have a population of 1,500,000. Hankow is described in the Chicago Inter Ocean's dispatches as "the great trading center for all central China, but Wu-Chang takes precedence over in its political importance. As the capital of the province and the seat of government of the viceroy, it has a great population of officials, including all the high provincial mandarins. Wu-Chang and Hankow, as great trade centers and ports for ocean steamers, have both felt to a considerable extent the influence of Western civilization. Both towns possess electric lighting systems, cotton mills, silk factories, and schools. Wu-Chang is the seat of a normal school for women. Within the last five or six years both cities have thrown their idols into the streets or into the river,

clearing many of their temples of priests and all emblems of worship to make room for public schools." Hankow suffered from incendiary fires after its capture by the insurgents, and several hundred "Manchus" were killed. A revolutionary committee appeared and gave strict orders, under a death penalty, that citizens of other countries should not be harmed, and so far no foreigners have been molested. From the three cities the insurrection has spread like wildfire until now revolution is recognized as existing in every province of China. Thousands of Imperial soldiers have joined the insurgents at Wu-Chang, who are under the command of Li Yuan Hung, called Lieutenant Commander of the Imperial New Army. Imperial troops are being rushed from Peking toward the three cities, but further desertions are feared. By the 17th the advance guard of an army of 40,000 men had arrived before Hankow.

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The purpose of this general uprising in the vast and ancient Empire of the East, with its more than four hundred million souls, is everywhere recognized as being twofold: first, the overthrow of the alien Manchu or Tartar dynasty which has governed China since 1644; and second, the establishment of a Republic for China. It is understood that the plans which have been so long quietly brewing, are all carefully worked out to these ends, and that even the first president of the new Republic has been selected in the person of Dr. Sun Yat Sen, who is now in the United States. In the meantime, the dispatches state, General Li Yuan Hung has been proclaimed provisional President. The insurgents themselves are said to disclaim a revolutionary purpose. They call themselves the "Constitutional Party," contending that the Constitution granted by the late Emperor has been violated under the existing regime. The following manifesto, prepared in the United States by Dr. Sun Yat Sen, was made public in New York on the 14th:

To all friendly nations, greeting:

We, the citizens of all China, now waging war against the Manchu government for the purpose of shaking off the yoke of the Tartar conqueror by overthrowing the present corrupt state of autocracy and establishing a republic in its place, and at the same time intending to enter upon a more close relation with all friendly nations for the sake of maintaining the peace of the world and of promoting the happiness of mankind, in order to make our action clearly understood, hereby declare:

1. All treaties concluded between the Manchu government and any nation before this date will be continually effective up to the time of their termination.
2. Any foreign loan or indemnity incurred by the Manchu government before this date will be acknowledged without any alteration of terms and will be paid by the maritime customs as before.
3. All concessions granted by the Manchu govern-