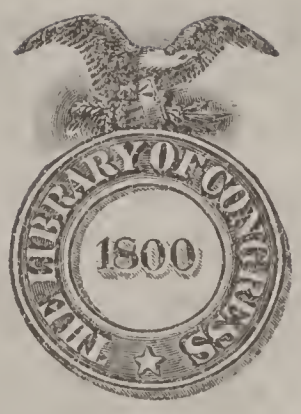

LECTURE

AMERICAN CORRESPONDENCE SCHOOL OF LAW

CONSTITUTIONAL LAW

—BY—

CHARLES G. NEELY

EX-JUDGE OF THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
AND LECTURER ON CONSTITUTIONAL LAW

BIOGRAPHICAL SKETCH

OF

Hon. Charles G. Neely.

Charles G. Neely was born in Benton, Illinois, on the 11th day of June, 1855, and was the son of Dr. I. M. Neely, a very eminent and distinguished citizen of Illinois, who became especially famous during the war.

Judge Neely received his early education in the local schools of Benton and later graduated from the University of Illinois, in 1880, of which institution as an alumnus, he has always been an enthusiastic supporter. In 1884 he was admited to the Bar and began the general practice of law, locating in the City of Chicago.

Judge Neely from early youth was gifted as a speaker and early developed the art of public speaking. Three years after locating in Chicago, he was selected by his neighbors and friends and elected in 1887, as a member of the Illinois Legislature, where his services were especially appreciated and valued as a member of the Judiciary Committee. Almost at the same time—he was singled out from the members of the Chicago Bar and appointed Assistant State's Attorney of Cook County. His career as State's Attorney was most successful and he participated in some of the greatest criminal trials ever tried in Cook County. He served in this capacity from 1887 to 1892, when he was selected by the Republicans as their candidate for State's Attorney. However, in the election which swept Illinois, carrying down every republican, he was defeated. Two years later he was again singled out by his friends and elected Judge of the Circuit Court,

which position he held with great credit to himself for six years.

During the period of all this work, Judge Neely, has been an indefatigable worker, and has appeared on the public platform many times as a lecturer and orator and for fifteen years has been a lecturer on "Constitutional Law" and is probably one of the best posted men in the country on that subject.

Judge Neely was married September 9th, 1880, has five children and lives at Evanston, Illinois.

LECTURE

By Charles G. Neely, Ex-Judge of the Circuit Court of Cook County.

Constitutional law teaches the principles of political government, the theory of the making and interpretation of constitutions, and declares the rules to be applied in construing the laws made under them.

A constitution is the organic law of a state, which embodies the principles for its government, enumerates its powers, designates the persons to whom the powers are to be entrusted, and provides the way in which the powers shall be administered.

The purpose of a constitution is to regulate the form of government, and to guarantee the liberties of the people.

In the United States a constitution is unlike a statute in that a constitution is adopted by the whole people. A statute is enacted by the representatives of the people in the congress, or in the legislature; a constitution can be changed only by the whole people who are to be governed by it; a statute may be modified or repealed by a subsequent congress or legislature; a constitution proclaims the fundamental principles of the government; a statute prescribes a rule of conduct for the people.

Constitutions are made not to create rights, but to preserve those already secured.

A Bill of Rights is an enumeration in a constitution of the civil and political rights which it guarantees.

A constitution contains two kinds of powers, enumerated or express powers, and implied powers.

A state is sovereign when it makes and enforces obedience to its laws and commands. A state is sovereign when it is independent of every other power, and has within itself all that is necessary to government, and when it can regulate its internal affairs according to its own will.

Sovereignty is the authority which creates and exercises the express and implied powers in a constitution. It is never delegated. The right to exercise it is.

In the United States, under our form of government, sovereignty resides with the people. When the people elect a representative to congress, or to a state legislature, they do not delegate to the representative, sovereignty, but the right to exercise it for them, for a period, and when his term of office expires they re-elect him, or elect some other person and again delegate to the one elected the right to exercise sovereignty. Sovereignty remains always with the people. It implies the power of a state to control and regulate its affairs without the dictation of any other government; the right to receive recognition as an independent power; the right to make treaties; to declare war; to conclude peace; to send ambassadors; and to do all other acts which a free state may do. The right to legislate is an exercise of sovereign power. The enforcement by a state of obedience to its laws, is a manifestation of its sovereignty.

The constitution of the United States was established by the people; all authority springs from them. The constitution of each state in the American Union was made by the people of each state.

By the Declaration of Independence the people of the United State committed themselves to the doctrine that government derives its just powers from the consent of the governed, and that in instituting a government the people should lay its foundations on such principles, and organize its powers in such form, as shall seem most likely to secure the safety and happiness of all the people.

By the police power is meant the inherent right of a state to make all needful laws and regulations to provide for the public safety, public morals, public health, and public comfort.

In American constitutional law the nation is spoken of with reference to the whole Union, while by a state is meant one of the members composing the Union.

As a principle of constitutional law the officers of the government are not liable for acts preformed by them in the course of their public duties, at the suit of private persons. Nor can the acts of the congress or of legislatures be set aside by the courts, because such acts were procured by fraud or corruption, judges are not liable for their decisions at the suit of private persons.

Wrongful legislation must be remedied by the ballot, the remedy for the abuse of power by the judges, is by their impeachment.

Executive officers are not liable at law for their acts in the performance of their political duties. The courts can compel executive officers to perform only ministerial duties, involving rights which have already been determined.

When we say a law is constitutional, if it be an act of the congress, we mean it conforms to the federal constitution; if it be an act of a legislature we mean it conforms to the constitution of both the nation and the state. It is not accurate to speak of an "unconstitutional law" in this country. An enactment not in conformity to the constitution is not a law.

Governments have been made in three ways. In the first method of making government one tribe overcame another by force, annexed it, but did not allow it any part in the government.

The second method of making government was like the first, but advanced upon it by allowing the conquered tribe to participate in the government. The third way in which government has been made, is known as the

English method, by which all the people are allowed a share in its administration through representatives appointed or elected to conduct its affairs.

The government of the United States was made in conformity to the representative idea. It is democratic in theory, by which is meant, that all the people share in its administration; it is republican in form, that is, representative. It is important to keep in mind that the Republic of the United States (is founded upon English ideas. Unless we recognize this fact, we shall fail to get a correct conception of our government.

The colonists had great experience in self-government before the federal constitution was formed. The idea of representative government was not new to them. They had been familiar for nearly two centuries with the practical workings of representative government. In Connecticut in 1639, a constitution was prepared which contained the main provisions of the present constitution of the United States. In 1662 Connecticut received a charter from Charles II. which contained the provisions of this early constitution. Rhode Island received a charter from the king in 1663, and after the state had been admitted to the Union, retained this charter as its constitution until the year 1842. Connecticut retained her charter until the year 1818 as her constitution.

Before the Revolution it was not the intention of the colonists to separate from the mother country, and they made their protest against the policies of the British parliament and king, on the ground that the colonists were Englishmen and entitled to the protection of the English law.

The colonists based their claims on Magna Charta, the Bill of Rights, the Petition of Rights, the Habeas Corpus Act, and the Common Law. The principles contained in all these great charters of English liberty the colonists insisted upon. The Declaration of Independence is a reaffirmation by the colonists, as Englishmen, of the princi-

ples contained in all these documents.

At the time of the Revolution there were three kinds of government in the colonies; the Provincial, Proprietary and Charter. The Provincial governments were New Hampshire, New York, New Jersey, Virginia, the Carolinas and Georgia. Each had a governor, and a council appointed by the king to advise the governor. The governor could call a general assembly of the freeholders who formed the lower house, the council appointed by the king composed the upper house, and the governor could exercise the right to veto bills.

The body so formed could make local laws not in conflict with the laws of parliament, and levy taxes. The governor also had the power to establish courts.

Maryland, Pennsylvania and Delaware were proprietary governments, each acted under a patent from the king, granting lands to be colonized by certain persons. These proprietors administered the government by governors and a council appointed by the proprietors and an assembly chosen by the freeholders.

The laws made by the legislatures so composed, in Pennsylvania and Delaware, were subject to the disapproval of the crown. In Maryland this was not so. The legislature made the laws free from interference by the king.

In Connecticut and Rhode Island the people elected their governors, and assemblies, and in their charters the king did not reserve the power to veto laws made by them. So in the beginning, Connecticut and Rhode Island were really two republics. These things are very important to be remembered and considered, in a study of our constitution. The experience which the colonists had in the administration of affairs, led the people along the right paths towards free government.

At the close of the Revolution a vast territory lying west of the Alleghany Mountains, and east of the Mississippi River came into the possession of the people of the

states. These lands had been held by New York, Massachusetts, Connecticut, and Virginia, under deeds patent from the king. The states holding these deeds ceded to the general government these large tracts of land. Congress while the constitutional convention was sitting, adopted an ordinance for the government of this territory and assumed control of it. There never was a more signal exercise or assumption of sovereignty.

The organization of the Northwest Territory was one of the most important steps toward the creation of the federal government. It was the first domain owned in common by all the states. The cession made by each of the four states, of land in this territory to the general government, was a significant recognition of the general government. By the surrender of their individual claims to this territory, the friction which had existed among the states laying claim, passed away.

The constitution of the United States is the result of a study of the problems of government, by the people who came as colonists to these shores, and who have developed here to the fullest extent, the idea of representative government. A study of the constitution is a review of the history of the people prior to the meeting of the constitutional convention.

The New England town meeting was a source of great influence in developing the idea of self-government.

The English law had always regarded colonists as civil corporations, and power was given them to manage their business affairs. England did not realize that the colonies were really political organizations. The colonists availed themselves of every opportunity to gain larger individual liberty and greater political recognition.

After the Revolution the people knew that they must have a different and stronger government than had existed under the Articles of Confederation or meet disaster. The Articles of Confederation had declared the association of the states to be, "A firm league of friend-

ship.'' But a league of friendship is not a government. The constitution of the United States became a necessity, in order to preserve what had been gained by the revolution. The constitution grew out of the exigencies of the times, and we cannot understand the instrument without knowing the condition of the country at the close of the Revolutionary war.

When the treaty of peace had been signed, it would seem natural that the people should work together harmoniously to establish a government. For five years after the Revolution the people drifted away from law. Great confusion prevailed throughout the country. There were feuds between cities, between counties, between states, and the presence of troops was required to maintain peace. The struggle over the right of the states to emit bills of credit, produced financial distress. The question of boundary lines threatened open war. The Navigation Acts adopted, created bitterness among the people of the states. A strong government was required. In 1782 New York asked congress to recommend to the states a general convention authorized to revise and amend the confederation. Three years later the state receded from her position.

Congress had many times asked permission from the states to allow it to establish and collect duties upon imports. New York refused to grant the request. The way unexpectedly opened. Maryland had agreed with Virginia as to the right of each in the matter of the navigation of the Potomac River and the Chesapeake Bay, and suggested that Delaware and Pennsylvania be asked to join them in building a canal between the Chesapeake and Delaware Rivers. James Madison, member of the Virginia legislature, introduced a resolution which was adopted, appointing commissioners of the State of Virginia to meet commissioners appointed by other states ''to take into consideration the trade of the United States, to examine the relative situation of trade of the said states;

to consider how far an uniform system in their commercial regulations may be necessary to their common interest and to their permanent harmony; and to report such an act to the several states relative to this great object which, when unanimously ratified by them, will enable the United States in congress to effectually provide for the same.'' The commissioners from five states, New York, New Jersey, Pennsylvania, Delaware and Virginia met at Annapolis in September 1786. These commissioners sent a report to their states, and to the other states not represented, recommending a meeting of commissioners from all the states, in Philadelphia on the second Monday of May 1787, ''to take into consideration the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the federal government adequate to the exigencies of the Union.''

Congress after hesitating, finally indorsed the recommendation, with this modification: ''For the sole purpose of revising the Articles of Confederation.''

The delegates to this convention to be held in Philadelphia were instructed differently. North Carolina, New Hampshire, Delaware and Georgia instructed their delegates ''to decide upon the most effectual means for removing the defects of the Federal Union.'' Virginia, Pennsylvania and New Jersey instructed their delegates ''for the purpose of revising the Federal Constitution.'' The delegates from Massachusetts, Connecticut and New York were instructed to labor ''for the sole and express purpose of revising the Articles of Confederation.'' The representatives from Maryland and South Carolina were authorized to work ''to render the Federal Constitution entirely adequate to the actual situation.''

Rhode Island refused to appoint commissioners. The convention met on the second day of May 1787. On the 13th day of May a majority was present. Washington was elected president and the making of the constitution began in earnest. There were fifty-five delegates present.

They were men of noted ability. Madison is called the "Father of the Constitution." He was then the best constitutional lawyer in any country. Alexander Hamilton, a young man of keen intellect, was there to champion a strong government. Then there were Oliver Ellsworth, Roger Sherman, James Wilson, Charles C. Pinckney, Benjamin Franklin, Edmund Randolph, and many other noted men.

Edmund Randolph of Virginia submitted the plan for a federal government, in fifteen resolutions. In his speech upon introducing the resolutions he used this language:

"The confederacy was made in the infancy of the science of constitutions, when the inefficiency of requisitions was unknown; when no commercial discord had arisen among states; when no rebellion like that in Massachusetts had broken out; when foreign debts were not urgent; when havoc of paper money had not been experienced; and when nothing better could have been conceded by states jealous of their own sovereignty. But it offered no security against foreign invasions, for congress could neither prevent nor conduct a war, nor punish infractions of treaties, or of the law of nations, nor control particular states from provoking war. The federal government has no constitutional power to check a quarrel between separate states; nor to suppress a rebellion in any one of them; nor to counteract the commercial regulations of other nations; nor to defend itself against encroachments of the states. From the manner in which it has been ratified in many of the states, it cannot be claimed to be paramount to the state constitutions, so that there is a prospect of anarchy from the inherent laxity of the government. As the remedy, the government to be established must have for its basis the republican principle."

The words in the very last sentence of the above quotation "the republican principle" are of great significance. In the very beginning of the deliberations of the convention the plan suggested of a federal government was

based on the representative idea,—"the republican principle."

The constitution creates three departments of government, the legislative, the executive and judicial.

It is provided that all legislative powers shall be vested in a congress of the United States, which shall consist of a senate and house of representatives. The house of representatives is composed of members chosen every second year by the people of the several states.

Representation is apportioned among the several states according to their respective numbers, not to exceed one representative for every 30,000 population, each state to have at least one representative. The first census was to be taken three years after the first meeting of congress, and within every ten years thereafter as prescribed by law.

The representation of the first congress was fixed by the constitution as follows: New Hampshire 3, Massachusetts 8, Rhode Island 1, Connecticut 5, New York 6, New Jersey 4, Pennsylvania 8, Delaware 1, Maryland 6, Virginia 10, North Carolina 5, South Carolina 5, Georgia 3.

The qualifications of a representative in the house are: that he must be 25 years of age, must have been seven years a citizen of the United States, and when he is elected, an inhabitant of the state in which he shall be chosen. The constitution does not require that a member of the house of representatives should reside in the district which he is elected to represent. Vacancies in the house of representatives are to be filled by the executive authority of the state issuing a call for an election.

The house chooses its speaker and other officers and has the sole power of impeachment. The senate is composed of two senators from each state, chosen by the legislature for a term of six years, and each senator has one vote.

On the question of representation in the senate, a great division arose in the constitutional convention. The small

states were jealous of the power of the large states. Mr. Patterson of New Jersey offered a plan to secure "federal equality." By its adoption the smaller states were given equal representation in the senate.

The qualifications of a senator are that he must have reached the age of thirty years, and been nine years a citizen of the United States, and an inhabitant of the state which he is chosen to represent. The senate choses its officers, except the presiding officer, who by the constitution is vice-president of the United States. In the absence of the vice-president, the president pro tempore elected by the senate presides.

The senate has the power to try all impeachments sitting as a court. When the president of the United States is tried the chief justice shall preside. A two-thirds vote of the members present is required to convict.

A judgment in cases of impeachment shall not extend further than to removal from office and disqualification to thereafter hold office under the United States; but the parties shall be liable to indictment and punishment, according to law.

The times, places and manner of holding elections for senators and representatives is fixed by the legislature in each state. Congress may alter such regulations, except as to the place of choosing senators. Congress must meet at least once in each year on the first Monday in December, unless they shall by law appoint a different day. Each house is the judge of the election, returns, and qualifications, of its own members. A majority of each house constitutes a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members.

Each house determines the rules of its proceedings, may punish members for disorderly behavior, and by a two-thirds vote may expel a member. Each house must keep a journal of its proceedings, and from time to time publish it. The yeas and nays of the members of each

house, may be called for at the request of one-fifth of the members present to be entered on the journal. Neither house during the session of congress shall adjourn for more than three days, without the consent of the other, nor to any other place than that in which the two houses shall be sitting. All bills for raising revenue must originate in the house of representatives, but the senate may propose amendments.

When a bill has passed both houses, before it becomes a law it must be presented to the president of the United States; if he approves he shall sign it, if not he shall return it stating his objections. The house to which it is returned may by a two-thirds vote pass the bill over the president's veto, and send the bill to the other house; if it shall approve the bill by a two-thirds vote, it becomes a law. The vote must be taken by a call of yeas and nays. If a bill is not returned by the president within ten days (Sundays excepted) after it shall have been presented to him, it becomes a law without his signature, unless congress by adjournment prevents its return, in which case it does not become a law.

Article 1 section 1 of the constitution, grants to congress power: To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States.

To borrow money on the credit of the United States.

To regulate commerce with the foreign nations, and among the several states, and with the Indian tribes.

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies.

To coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures.

To provide for the punishment of counterfeiting.

To establish post-offices and post-roads.

To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their writings and discoveries.

To constitute tribunals inferior to the Supreme Court.

To declare war, grant letters of marque and reprisal.

To raise and support armies.

To provide and maintain a navy.

To make rules for the government of the land and naval forces.

To provide for calling forth the militia.

To execute the laws of the union, suppress insurrection and repel invasion.

The executive power is vested in a president whose term of office is four years. Each state appoints electors equal in number to the whole number of senators and representatives of that state in congress. The people vote directly for electors, they in turn vote for a president and vice-president.

The judicial power of the United States is vested in one Supreme Court and in such inferior courts as congress may ordain and establish.

In Article 3, section 1, it is provided that the judicial power of the United States shall extend to all cases in law and equity arising under the constitution, the laws of the United States, and treaties made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to cases of admiralty and maritime jurisdiction; to controversies in which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens or subjects.

The eleventh amendment provides that the judicial power of the United States shall not be construed to extend to any suit in law or equity prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state. This amendment

grew out of a decision of the Supreme Court in 1793, in the case of Chisholm vs. The State of Georgia, holding that a state could be sued by a citizen of another state.

The ninth and tenth amendments declare more definitely the rights of the people, and the powers reserved to the several states.

The thirteenth, fourteenth and fifteenth amendments more positively declare the powers belonging exclusively to the United States.

The ninth and tenth amendments act as limitations upon the general government; the thirteenth, fourteenth and fifteenth amendments are limitations upon the powers of the states.

Under the Articles of Confederation the general government was considered the agent of the states. The federal government created by the constitution establishes the supremacy of the nation.

The constitution was not submitted to the legislatures of the states for adoption, but was ratified by conventions of the people in the thirteen original states.

The powers of the national government are separated from the powers of the state governments. The national government cannot interfere with, control or oppress the state governments. The power of the Nation is centralized, and should be in order to make it adequate to national control.

Each state elects many executive officers, governor, lieutenant governor, auditor of public accounts, treasurer, secretary of state, and others, but there are only two officers of the national government elected by the people, the president and vice-president. All other officers who administer the law are appointed.

The president has no authority over the governor of a state. The powers of congress are limited to the express grant in the constitution, and the implied powers arising naturally out of the express powers. Congress, and no legislature enforces the laws they make. The executive

power administers the law. The courts neither make, nor administer the law. They interpret and construe it.

No single person has or can exercise much power. Congress and the legislatures are a check upon the executive. Congress or a legislature cannot pass oppressive measures. The executive and court are checks upon legislation. The courts can only decide cases brought before them.

The power of amendment provided for in the constitution affords a means to correct any real defects, or remedy any abuses, and takes away any temptation to revolution.

Congress can make no law respecting religion, either to establish it, or to prohibit its free exercise. Nor can congress abridge the freedom of the press, or the right of the people peaceably to assemble and to petition the government for redress of grievances. These are great securities of liberty. They are great guaranties of peace and happiness to all the people.

A government making such guarantees, and vouchsafing such full liberties has the love of the people, and their obedience.

The framers of the constitution knew that if the people loved the government, they would obey and keep its laws. Religious and civil liberty are both necessary to government. Progress has not been made without these two great factors working together in history.

The constitution is based upon individual integrity, and public righteousness. These fundamental principles prevail in every line of the instrument. The love of liberty, and not the love of power, permeates its provisions. Persons pass away, people live. The constitution guards the rights of the people.

Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

Article 6, section 1, of the constitution provides that: Full faith and credit shall be given in each state to the

public acts, records and judicial proceedings of every other state.

Article 6, section 2, provides that: The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states. New states may be admitted into the Union, but no new state shall be formed within the jurisdiction of any other state, nor by the conjunction of two or more states or parts of states, without the consent of the legislatures of the states concerned and of congress.

A republican form of government is guaranteed by the constitution to the several states.

Amendments may be made to the constitution in two ways: Congress shall, when two-thirds of both houses deem it necessary, propose amendments, or on the application of the legislatures of two-thirds of the several states, call a convention to propose amendments, which if ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by congress, shall become valid and binding as a part of the Constitution.

The Constitution provides that no state shall make any law impairing the obligation of contracts.

Great objection was made to the adoption of the Constitution in several of the states, because it did not contain a bill of rights. In 1789, two years after the constitution had been made and the government organized thereunder, ten amendments were proposed and ratified, these constitute the bill of rights in the constitution, or strictly speaking the first eight amendments are the bill of rights.

The framers of the constitution drew largely from history in making the constitution, but there are in it some new principles. One of these is that the government of the United States under the constitution is to operate upon individuals and not upon states. Another is that

the government of the United States shall be a government by law and not by men.

The principle that the judicial department may pass upon the validity of the acts of the legislature, is entirely new. An act of parliament is law until it is repealed. An act of congress not in conformity with the constitution is not a law.

The constitution established the Union. The states were not placed side by side simply, but they coalesced, forming "a more perfect union." The constitution is not a mere compact between the states, it is the will of all the people. The Union cannot be dissolved. The states cannot be destroyed.

It will grow upon the student as he considers the reasons for the making of the constitution, and learns from a careful analysis of the constitution, how it provides by its express powers, and by its implied powers, for an enduring government.

The preamble to the constitution recites six reasons for making the constitution as follows: "We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution, for the United States of America."

The members of the constitutional convention in the spirit of the lofty principles of this preamble, and with the great purpose of "raising a standard high to which all the people might repair," constructed this immortal document.