

*THE*  
*American Forum*  
*OF THE AIR*



*Vol. XIII*

*SATURDAY, JULY 1, 1950*

*No. 27*

**“Is The Constitution A Modern  
Instrument Of Government?”**

*SENATOR HUBERT H. HUMPHREY*

*Democrat of Minnesota*

*SENATOR KARL E. MUNDT*

*Republican of South Dakota*

*THEODORE GRANIK*

*Founder and Moderator of The American Forum of the Air*

*Announcer: The National Broadcasting Company presents the American Forum of the Air, founded 22 years ago by Theodore Granik, and dedicated to the full and public discussion of all sides of all issues, coming to you from the NBC Theater in Washington, D. C.*

*Now here is your Moderator, Theodore Granik.*

*Chairman Granik: History records no more spectacular progress than that of the United States of America under the Constitution adopted more than 160 years ago. But with the growth of our material wealth, the increase in our population and the development of our strength and influence throughout the world, there have come vast new responsibilities that could never have been anticipated by the framers of the Constitution. The demands upon our institutions of government—our courts, our congressional committees and our executive departments—are unprecedented and increasing. These problems have caused many thoughtful observers to ask the question, "Is our Constitution adequate for the problems of the modern world?"*

*On the eve of our Independence Day, the American Forum of the Air is pleased to present two distinguished Senators to help answer these questions. They are Senator Hubert H. Humphrey, Democrat of Minnesota, and Senator Karl E. Mundt, Republican of South Dakota.*

*Would you care to take the question first, Senator Mundt?*

SENATOR MUNDT: I will be glad to, Ted.

I think it is especially fitting that we are discussing the topic, "Is the Constitution a Modern Instrument of Government" on the eve of our national birthday which we commemorate on July 4, 1950. Fourscore and 7 years ago at this very hour the armies of the North and the South were arrayed against each other at Gettysburg in a mighty struggle which ended happily because we retained the unity and the strength of the Republic. In his Gettysburg address Abraham Lincoln said fourscore and seven years ago as follows:

"Fourscore and seven years ago our fathers brought forth on this continent a new nation conceived in liberty \* \* \*"

That was in 1863. Today in 1950, just exactly fourscore and seven years later Americans are again locked in battle in far-off Korea and engaged in debate here at home to determine whether liberty and human freedom are to be the heritage of all Americans. Throughout the entire century and three-quarters of American history the doctrines and stipulations of our American Constitution have served us well. They continue to serve us well today. In my opinion, our Constitution is not only a modern instrument of government, but it is vitally important in this wicked world of governments in which too few men for too long a time have exercised too much power over too many people, that we re-dedicate ourselves to the basic principles of our American Constitution. At home and abroad there are those who clamor that because the Constitution is old and because liberty and freedom have never produced Utopia, the concept of big govern-

ment and rulership by men should supplant the basic concept of limited government and rulership by law.

I hope that we always will retain government by law—American Constitutional concept in this Republic.

*Chairman Granik: Senator Humphrey.*

SENATOR HUMPHREY: I believe, Mr. Granik, there is going to be very little heated argument tonight as to whether or not the Constitution is a modern instrument of government. I believe that it is, and I believe that it is primarily because the American people have had the intelligence to know that any document must be continually brought up to date so as to meet the new problems which face each and every generation. In fact, that was one of the purposes and objectives of the founding fathers. They provided in one of the Articles of the Constitution for the amendment process.

I think it is also important to know that this great Constitution of ours has stood us well because of the great political heritage. Oftentimes our contemporaries feel that the Constitution was created in a rather quick and hurried manner, when in fact it represents the political thinking of some 3,000 years of recorded history. I always enjoy a study of the Constitution, constitutional history and constitutional law. I know that as we dig back into the history of our Constitution we find that it is based upon some of the great principles of Aristotle and Socrates, the rule of reason, the fact that man is rational and capable of governing himself. More important, this Constitution of ours is based upon a great spiritual principle, upon the importance of the individual, recognizing man's humility before his God and recognizing also that man was created in the image of his Maker. It is for that reason that the principle of Government by the consent of the governed is such an important and all-embracing principle in constitutional government as we know.

*Chairman Granik: Senator Humphrey, should more specific language be included in the Constitution to restrict each encroachment of the Federal Government upon the vested rights of the individual states?*

SENATOR HUMPHREY: No. I think, as a matter of fact, one of the great virtues of our Constitution is that those who wrote it and prepared its articles recognized that broad principles should be laid down and that the minutiae, the details, should be excluded. I think that is a tribute, may I say, to the statesmanship and the great philosophical understanding of the men who attended the constitutional convention.

*Chairman Granik: Senator Mundt?*

SENATOR MUNDT: I think it is quite true that those broad principles are really part of the genius of our great American Constitution. I would like to say just a word or two about some of those broad principles which it seems to me we must be very careful these days to continue and to protect. It seems to me that deeply imbedded in the character of our Constitution are two great concepts, both involv-

ing the separation of powers. We are all pretty conversant with one of those concepts, and that is that there should be separation among the executive, legislative and judicial in the manifestation of the affairs of the government. It seems to me that equally important is the concept found in our Constitution over and over again, that there should be a separation of the powers of the people in so far as their political economic lives are concerned. I think the Constitution wisely dealt with the political affairs of men, retaining for the individual American the right to manage his own economic affairs. I think those are two important points in the principles of the Constitution, and I want to call special attention to the fact that there is that separation implied and expressed between the economic and the political activities of the citizens of the United States.

*Chairman Granik: Senator Humphrey?*

SENATOR HUMPHREY: I would like to develop a moment some of these basic principles that are involved in our Constitution.

First of all, the preamble of the Constitution sets the theme of the entire constitutional system when it says: "We, the people." That is a very significant phrase. It is often memorized and mouthed and repeated in a sort of routine manner, but "We the people" exemplifies what we call the principle of popular sovereignty. In other words, that all power rests with the people. As I said, that goes back to the system of natural law, the principles of natural law, there all power is inherent in man, by the very fact of his being. The second principle I would like to point out is that the preamble to the Constitution gives us the answer to tonight's discussion, is this a modern instrument, because the preamble says we the people do, in the present, not did or can or shall or will, but we the people do, in this day of July 1950, and every day of our lives, so that it is constantly up-to-date. I think that the founding fathers knew exactly what they were doing when they used that contemporary language, that the Constitution is to be applied to the needs of the day, that it is to be developed and expanded in terms of the social, political and economic environment of the time. As my friend from South Dakota says, as long as you don't destroy the principle, and those principles I should say should be indestructible and they surely should be protected.

*Chairman Granik: Senator Mundt, Article VIII of the Constitution says the Congress shall be the power to provide for the common defense and general welfare of the United States. Does that give a constitutional justification for the welfare state which has been discussed?*

SENATOR MUNDT: No, I would think not because there are 17 specific grants of power that the American states gave to the Federal Government, and in none of those was there anything which would indicate that it was the function of the Federal Government to provide the common welfare. It was to promote the common welfare as was pointed out by Senator Humphrey, in the preamble. I think those who would impose some kind of socialism on this country fail

to recognize that our constitutional forefathers rather wisely, and looking a long way ahead, used the term that the Constitution should promote the common welfare and not provide it.

SENATOR HUMPHREY: There surely wouldn't be any argument over the word whether it is promote or provide because it surely is quite explicit in the Constitution. Nevertheless, I think it also should be noted that while the Constitution talks about promoting the general welfare, it has in the same phrase, without a semicolon or without a comma or dash or any other method of setting out language, "and to secure the blessings of liberty for ourselves and our posterity," which indicates to me that the founding fathers, the great philosophers and teachers of constitutional government, saw nothing in it incompatible with the efforts of a government to promote, that is, to try to provide some of the conditions for the general welfare, and to secure the blessings of liberty for ourselves and our posterity.

This whole problem of the so-called welfare state, which is a tag, a name, is a matter of degree. It is a matter of emphasis how far you go. I think both the Senator from South Dakota and myself would agree that we do not believe in public ownership. I know he doesn't and I do know that I don't. I have never recommended what I consider to be nationalization of American industry. I believe the major job of American government is to try to protect those conditions in society that make possible individual political liberty and individual economic freedom, thereby meaning the preservation of the institutions of private property, as well as the preservation of the basic civil rights of our people. Civil liberties is a better word.

SENATOR MUNDT: In that connection, Mr. Granik, I would like to point out that John T. Flynn in his very challenging and controversial book, *The Road Ahead*, which I presume all Americans have read by this time or should have read, points out very clearly on page 66 that if the Government of the United States goes into business of trying to provide the general welfare, it eliminates that separation of powers between the economic and political lives of men which neither Senator Humphrey nor I want, because neither one of us want public ownership. I think that is an important thing to point out, that if you go too far in the direction of providing for the needs of men, then you lose something pretty sacred in the minds of our forefathers, and I am sure pretty sacred to both Senator Humphrey and myself.

SENATOR HUMPHREY: I would make a comment, Mr. Granik, about Mr. Flynn. I have known of Mr. Flynn's writings and his works for some time. I have made the statement that I think he is a rather poor student of economics and a rather inept and poor student of political philosophy. I happen to believe that Mr. Flynn gets most of his observation through revelation rather than from history or historical perspective. For example, Mr. Flynn does not seem to be able to disassociate between what one calls the politics and what one calls economics. The Constitution of the United States, at least a good



portion of it, is directed toward what we call man's political liberties. To be sure, that portion which pertains to commerce and patent rights and copyrights, pertains to his economic liberties. I think it is very, very definitely important that we remember that basically what man seeks is his own individual freedom. In other words, put first things first. I happen to believe that a private property system is basically supported by a free political system, and that the free political system is of vital importance to the preservation of the institutions of economics. I want to emphasize that—

SENATOR MUNDT: If I may, I should fortify my position by quoting another authority in addition to John T. Flynn, since Senator Humphrey doesn't seem to recognize him or consider him an authority.

SENATOR HUMPHREY: I recognize him. May I say he is an able writer. He is just a poor student of politics.

SENATOR MUNDT: I think he is not only an able writer but a very astute student of politics and economics, but that isn't the subject of the debate today. Let me quote from a great Democrat, Grover Cleveland, who in his inaugural address March 4, 1893, said: "The lessons of paternalism ought to be unlearned and the better lesson taught that while the people should patriotically and cheerfully support their government, its functions do not include the support of the people."

Writing away back there Grover Cleveland, who was a Democrat and must therefore have been a great student of politics and a great student of economics, said the same thing that John T. Flynn has said in "The Road Ahead."

SENATOR HUMPHREY: I would say to my friend from South Dakota that Grover Cleveland is some 65 years from our existence, No. 1, and that of course puts some new perspective upon it. But more than that, let's get back to what he was really talking about. No one expects a government to be paternalistic, but since my friend from South Dakota quoted Abraham Lincoln, I would have him know that Abraham Lincoln said that a government was of the people, by the people and for the people. The government is not a disinterested third party. This Government is based upon the principle of government by the consent of the governed. It is based upon the principle of majority rule. It is based not upon the principle of the state. The rights that the state had they got from the people. Article X of the Constitution basically points out the importance of popular sovereignty and the basic structure of our government is upon the will of the American people as they express it. If the American people express their will through their elected representatives for a social security program, that is not paternalism because the American people have voted that, and the Constitution is based upon the people, not upon a scrap of paper, not upon the judiciary, the legislative or the executive, but based upon the will of the people as it is exemplified by the machinery and the mechanics of government which are so well developed in the Constitutional form.

*Chairman Granik: Talking about government, Senator Mundt, I would like to ask this question of you. Article IV, Senator, states that the United States shall guarantee to every state in the Union a republican form of government. How do you define a republican form of government?*

SENATOR MUNDT: That is just one more reason why I am so fond of the Constitution. I wish it could have been as prophetic in that respect as it has been in many others. Of course I define a republican form of government as one in which there is representative government, one in which the people express their will through their representatives rather than the popular sovereignty idea just mentioned by Senator Humphrey, whereby of course they vote directly for the issues at stake.

*Chairman Granik: May I take a question?*

SENATOR HUMPHREY: May I make just one comment? I was going to say to my friend from South Dakota if it were not for the fact that the Constitution guaranteed a republican form of government, I am sure that the people would have Democrats in every state legislature, but because of our great respect for the Constitution, we divide it up and give it to them, with a capital "R."

SENATOR MUNDT: I sometimes think myself that if it were not for the Constitution the Democrats would take over everything. I agree with you.

SENATOR HUMPHREY: Let me just make this comment, Mr. Granik. Senator Mundt has said that the principle of popular sovereignty he looks upon as a principle of direct participation. My friend knows that is not the case. That is what we mean by popular election or by the referendum or by the direct ballot on each and every item of legislation. The principle of popular sovereignty is simply this, that all power rests in the people, that all power is inherent in the people, and that the only power supreme over the people is God Almighty Himself, and that the people in drawing up a Constitution have been willing to delegate certain powers, to release certain powers. So, you see the basic principle in the Constitution is one of limited government and of delegated powers, but with all powers, as the Tenth Amendment to the Constitution says—and I think it would be well to read the Tenth Amendment.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people."

So you get right back to the first principle.

SENATOR MUNDT: Implied in that of course is that the people express themselves through their state governments to the Federal Government on those things not delegated specifically in the seventeen instances to the big central government.

SENATOR HUMPHREY: There is no doubt about that.

*Chairman Granik: Let's hear from the people. Let's take a question from one of the audience.*

QUESTION: My name is Moe Lerner. I operate a limousine service. I would like to address my question to Senator Humphrey, who incidentally is one of my valued customers.

Senator, under the Constitution did the President have the legal right to order troops to Korea without first getting the approval of Congress?

SENATOR HUMPHREY: I shall answer that question very briefly and tell you that in my view and in my understanding of the Constitution, according to Article II of the Constitution, the President not only had that right but he had that responsibility. He had that great duty, because the President of the United States takes an oath of office, and one of the things that he undertakes as a member of the Government is to be Commander-in-Chief of the Army and Navy and the militia of the several states when called into the active service of the United States, and also that he shall at all times protect the general welfare, protect the sovereignty of our nation and the security.

I would even develop it to point out that the history of this country is resplendent with such examples. For example, we have used the troops of our nation in such instances as Nicaragua and Haiti. We used troops in the border raids, as you recall, in 1916 with Pancho Villa in Mexico. We used the troops of our country in the Boxer Rebellion in China. We used them at the time of the pirates in Tripoli. We have used them repeatedly, because what the President is obligated to do under the Constitution is to protect the security of this land, the security of America and the security of persons in our armed services and other citizens.

*Chairman Granik: Would you care to comment on the question, Senator Mundt?*

SENATOR MUNDT: I have no desire to question, of course, the constitutionality of the action that the President has taken in connection with the Korean crisis, but I think I know what the young man who asked the question had in mind. Like him, I am distressed by the fact that in the general area of foreign policy it seems that the United States Congress and the Senate are becoming less and less important, getting consulted less and less, and that we come into the picture after the fact has been achieved. For example, should, God forbid, the President's action in Korea and the situation there develop into a situation from which war eventuates, we would have a situation in which war would be virtually declared by executive action rather than by the subsequent action of Congress. It is one of those things, because the world is getting smaller, because we don't have the precedent on which to build it, in which we find Congress and the people being consulted less and less and less in the field of foreign policy. To that extent we are growing alarmingly to the same extent and to the same degree that people in totalitarian countries are in foreign policy.

SENATOR HUMPHREY: I of course must take exception to that remark because the basis of the American constitutional system under

which our President operates is entirely different from that of the totalitarian powers. This same President is elected. He can be defeated. This same President can be impeached, if need be, by the members of the Congress of the United States. There are all kinds of legal protections.

SENATOR MUNDT: There are protections, of course, but in reality no one would contemplate impeaching the President in the middle of a war. While it is legally possible, from all realistic standpoints we find ourselves as a people moving in foreign policy much as the people of Germany moved in foreign policy under Hitler or as they moved in Spain under Franco. The decisions are made by the Executive, and the people, if consulted at all, are consulted like the members of the Reichstag were in Germany on September 1, 1939, when Hitler said, "I have moved my troops into Danzig."

As I said, I am not going to quarrel about the constitutionality of it, but we might as well face up to the fact that in the field of foreign policy, democracy is not functioning with nearly the virility that it does, for example, under the parliamentary system of Great Britain.

SENATOR HUMPHREY: I think we can well recognize the parliamentary system of Great Britain is more responsive to present-day or current-day needs, but I want my friend from South Dakota to know that under Article II, Section 2, of the Constitution, the President is expressly directed to take charge of foreign policy only with the advice and consent of the Senate, which follows after, if you please, the direction, the mandate that it be in charge of treaties and foreign policy. Under the Constitution he is permitted to establish, in fact, he is authorized to establish, the Secretary of State.

SENATOR MUNDT: Of course, you can't read into that anything which gives to the President the right to involve the country in war without action of Congress.

*Chairman Granik: May I take another question? Go ahead, sir.*

QUESTION: This is a question directed to Senator Mundt. My name is George Sterling. I happen also to be in the automobile business.

Senator, since members of Congress also take an oath to defend the Constitution just as members of the Supreme Court, why should the Supreme Court have superior power over the Congress and the right to declare a statute invalid, because of the Court's constitutional interpretation?

SENATOR MUNDT: That is an interesting ramification in our constitutional process, because actually in the American Constitution the United States Supreme Court is not given that right expressly any place. They have derived it because in the Constitution it says that Congress shall have the right to pass laws in pursuance of the Constitution. It was found eventually that they had to have somebody as an umpire or referee in the contest. The Supreme Court stepped into



that vacuum and gradually, by practice and precedent, they have assumed more and more authority in that connection.

SENATOR HUMPHREY: I would like to point out a little historical background on that. At the time of the Colonial legislatures—by the way, in the early days of American colonial life we had a good deal of self-government, and may I say to my friend from South Dakota the legislatures used to make it tough for the governors, as sometimes the Congress and the legislatures today make it a little tough for presidents and governors.

SENATOR MUNDT: And vice versa.

SENATOR HUMPHREY: And vice versa. Back in the Colonial days it wasn't so much "vice"; it was mostly "versa."

SENATOR MUNDT: I would agree it is more "vice" now.

SENATOR HUMPHREY: The legislature at that time could pass a law, and then what was known as the privy council in the British Empire, the King's council, would review that law as to whether or not it was within the framework of the British Imperial system and within the framework of the British Constitution. That is part of the background of judicial review. I happen to believe that the courts have become the protectors in a great sense of our liberties, which is not too good a comment, by the way, upon some of the Congressional processes.

*Chairman Granik: May I take a question from the young lady?*

QUESTION: My name is Judith Knight. My question is for Senator Humphrey: Do you think some type of amendment would furnish more adequate support to the United Nations?

SENATOR HUMPHREY: I happen to believe that if we wish to amend the Charter of the United Nations so as to establish, let us say, international law and a modicum of world government over certain areas, such as control over the instruments of mass destruction, to yield a portion of our sovereignty in so far as the making, let us say, of treaties or the making of common defense agreements, we possibly would have to amend the Constitution. However, there is surely nothing within the Constitution at the present time that prohibits our active participation in the United Nations; nor is there anything in the Constitution at the present time that would prohibit our pooling some of our military resources for the purposes of an international police force. However, if we were going to go further, if we were going to go to a point where we would deny the Congress of the United States the right to declare war or to deny the President of the United States the right to use our armed forces in the protection of the security of the country, then we would have to amend the Constitution, and may I say I would insist upon it as one member of the legislature.

*Chairman Granik: I am sorry, gentlemen, it is time for your summaries. Your summary, please, Senator Mundt.*

SENATOR MUNDT: I would like to summarize simply by stating that I think it is important that all of us as Americans recognize the point that I tried to stress in my opening remarks, and that is, if we

are going to remain free, if we are going to continue to have these great liberties which are so typically American today, it is tremendously important that all Americans recognize the separability of the Constitution goes not only to the political aspect, that you have the separation of powers not only among the executive, legislative, and judicial branches of government, but we must keep separate also the economic and the political functions of the people, because once government per se starts operating economic enterprises, starts mingling the economy of the country into the politics of the country, we wind up in some kind of totalitarian state. History has disclosed that time and time again all over the world, and only those countries remain free in which the people themselves are permitted to conduct their economic enterprises under the proper rules of the game established by the Congress and made acceptable by the Government.

So, our Constitution today stands us in good stead, as it always has, a modern instrument of government, provided we keep it that way.

*Chairman Granik: Thank you, Senator Mundt. Senator Humphrey, your summary, please.*

SENATOR HUMPHREY: I would place my emphasis in summary upon the fact that the Constitution of the United States is based upon the principle of majority rule and respect for minority rights. The Constitution is an expanding document. It contracts; it expands. It is able to meet the needs of our time by judicial interpretation, by the laws of the land as laid down by the Congress and the decisions as made by the executive branch of the Government.

I would point out to my friends, and particularly to my colleague from South Dakota, that the politics of a people and their economics are one and inseparable, but the basic principle of a constitutional system based upon majority rule is the political freedom of the people, the right of the people to participate in government, the right of the people to share in government, to be governed only by the consent of the governed, and, more than that, that whatever the rule of the majority may be, that it must be respected and that if the majority does rule, if the processes of government and of election are protected, no one can call the government dictatorial, and no one can say that the will of the people has been abrogated.

*Chairman Granik: Thank you, gentlemen.*

*You have been listening to a discussion, "Is the Constitution a Modern Instrument of Government?" Our speakers have been Senator Hubert H. Humphrey, Democrat of Minnesota, and Senator Karl E. Mundt, Republican of South Dakota.*

*Announcer: For reprints of this discussion, send ten cents to Ransdell Incorporated, Printers and Publishers, Washington 18, D. C. That is ten cents to R-a-n-s-d-e-l-l, Ransdell Incorporated, Washington, D. C.*

*Join us again next week at this same time for a discussion on the vital question, "Do We Need a New Foreign Policy?" Our speak-*

ers will be Senator William Benton, Democrat of Connecticut, and Senator George W. Malone, Republican of Nevada.

*The American Forum of the Air, founded and moderated by Theodore Granik, has been presented as a public service by the National Broadcasting Company and has come to you from Washington, D. C.*

*This is John Batchelder speaking.*

*The Proceedings of*

## **THE AMERICAN FORUM OF THE AIR**

*As presented over the coast to coast radio network and through the television network facilities of the National Broadcasting Company, Inc., are printed and a limited number are distributed free to further the public interest in impartial radio discussions of questions affecting the public welfare.*

*by*

**PRINTERS**

**RANSDALL INC.**

**PUBLISHERS**

**810 Rhode Island Avenue, N. E.**

**WASHINGTON 18, D. C.**

*(When requesting copies by mail, enclose ten cents to cover mailing)*

The telecast of The American Forum of The Air is held every Saturday evening at 7 o'clock, Eastern Daylight Time, in the N. B. C. Theater, Wardman Park Hotel, Washington, D. C., and rebroadcast over N. B. C. Radio Network the following day. The public is cordially invited to attend these telecasts and to submit questions from the floor to the participants. Admission is free and tickets may be obtained at Wardman Park Hotel or at N. B. C. Translux Theater, Washington, D. C.



J-5494



# Minnesota Historical Society

Copyright in this digital version belongs to the Minnesota Historical Society and its content may not be copied without the copyright holder's express written permission. Users may print, download, link to, or email content, however, for individual use.

To request permission for commercial or educational use, please contact the Minnesota Historical Society.



[www.mnhs.org](http://www.mnhs.org)