

Gardner
U.S. Constitution

January 5, 1911

Dear Mr. McKee:-

I note your comments on the question of the constitution, and of course am always interested in anyone's investigation on these subjects. Of course some matters were left unsettled in the constitution. These matters, as for instance that of secession, have been settled since, perhaps in extra-constitutional ways. The Civil War is one of those ways, although the Supreme Court, case of Texas vs. White, confirmed that settlement. No doubt problems have arisen since the constitution was made which could not have been foreseen by the makers, and for which they could not provide. It doesn't at all follow, however, that the courts have any right to pass on such cases, and to allow them to be held lawful under the constitution. That would depend on the nature of the case.

For instance, the constitution authorized Congress to establish

Mr. C. C. ...

January 2, 1911

Dear Mr. McKee:-

I note your comments on the question of the constitution, and of course am always interested in anyone's investigation on these subjects. Of course some matters were left unsettled in the constitution. These matters, as for instance that of secession, have been settled since, perhaps in extra-constitutional ways. The Civil War is one of these ways, although the Supreme Court, case of Texas vs. White, confirmed that settlement. No doubt problems have arisen since the constitution was made which could not have been foreseen by the makers, and for which they could not provide. It doesn't at all follow, however, that the courts have any right to pass on such cases, and to allow them to be held lawful under the constitution. That would depend on the nature of the case.

For instance, the constitution authorized Congress to establish

post-roads. No one in 1787 dreamed that a post-road was anything but a turnpike along which a mail-carrier could go either in a wagon or on a horse. The invention and development of railways, however, has made it possible for Congress to make mail contracts with railway corporations. It is a fair interpretation of the constitution that the power was given in the power to establish post-roads.

On the other hand, the constitution did not provide any power in Congress to legislate on the family relation. The history of more than a hundred years since seems to me to make it quite important that Congress should have this power, but I am sure that the situation as we have it to-day could not have been foreseen by the makers of the constitution. At the same time, for the Court to pass on this question and hold that Congress has power would be subversive of all law. It is the tendency in the latter of these directions on the part of Dr. Abbott's school of thought which I deprecate. Of course it is needless to add that neither Dr. Abbott nor Mr. Roosevelt is a lawyer, and they give no signs of any thorough study of legal problems.

With best wishes, I am,

Very truly yours,

J.P.G.

Dear W. P. McKee,
The Frances Shimer School,
Mount Carroll, Illinois.

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With best wishes, I am,

Very truly yours,

J.P.P.

Dean W. P. McKee,
The Frances Shiner School,
Mount Carroll, Illinois.

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THE FRANCES SHIMER SCHOOL
OF THE UNIVERSITY OF CHICAGO

MOUNT CARROLL, ILLINOIS

OFFICE OF THE DEAN Jan. 2, 1911.

President H. P. Judson,
University of Chicago.

Dear President Judson:-

Referring to Dr. Abbott's "anarchy" and my own, it is not for me to undertake to argue with you on a matter of this description. On your statement of the case, there is no argument, and if Dr. Abbott really means to try to explain the constitution in a way that the makers of it certainly did not intend, then I am not with him.

I have been of the opinion that the makers of the constitution left some matters in doubt, without clear statements, possibly intentionally. For example, I have been convinced that this is true in the matter of the right of the state to secede, and I do not believe that the required number of states would have adopted the constitution if that document had distinctly declared that if a state came in, it must stay.

Many problems have arisen since the constitution was made which could not have been foreseen by the makers and they, therefore, could not have been expected to provide for such contingencies. I have supposed that it was reasonable that the courts should pass on such matters, and, in some cases, allow them to be held lawful. Possibly this is, however, dangerous, as you suggest.

I would be very much interested to know whether Dr. Abbott would really agree to your summing up of his argument.

THE FRANKLIN D. ROOSEVELT SCHOOL
OF THE UNIVERSITY OF CHICAGO
MOUNT CARROLL BLVD.

OFFICE OF THE DEAN
Jan. 2, 1911.

President H. P. Johnson,

University of Chicago.

Dear President Johnson:

Referring to Dr. Abbott's "amnesty" and

my own, it is not for me to undertake to argue with you as to
either of these descriptions. On your statement of the case, there
is no argument, and if Dr. Abbott really means to try to explain
the constitution in a way that the makers of it certainly did not
intend, then I am not with him.

I have been of the opinion that the makers of the con-
stitution had some matters in doubt, without clear statements,
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this is true in the matter of the right of the state to secede,
and I do not believe that the reported number of states would
have adopted the constitution if that document had distinctly
declared that if a state came in, it must stay.

They probably have wisdom since the constitution was
made which could not have been foreseen by the makers and they,
therefore, could not have been expected to provide for such con-
tingencies. I have supposed that it was reasonable that the
courts should pass on such matters, and, in some cases, allow
them to be held invalid. Possibly this is, however, dangerous,
as you suggest.

I would be very much interested to know whether Dr.
Abbott would really agree to your reading up of his argument.

I did not get that impression as I went through his editorial,
but I confess that I did not read it with the greatest care.

Cordially yours,

Wm. Keel

I did not get that impression as I went through his editorial,
but I confess that I did not read it with the greatest care.

Cordially yours,

W. B. E. D.