

Taking the 25th

by Arthur Schlesinger Jr.

.....

... During [President Nixon's] effort to adorn the Supreme Court with G. Harrold Carswell, he instructed Senator Saxbe of Ohio that the President was "the one person entrusted by the Constitution with the power of appointment," a singular claim repeated twice more in the course of the letter. The claim was singular because, had Mr. Nixon bothered to consult the Constitution, he would have discovered that this document says, with customary precision, that the President "shall nominate and by and with the Advice and Consent of the Senate, shall appoint" designated public officers.

The difference between nomination and appointment was something that Presidents of the United States before Mr. Nixon had no particular difficulty grasping. "I was only one-half of the appointing power," Theodore Roosevelt wrote in his "Autobiography": "I nominated; but the Senate confirmed." President Nixon, however, clearly hoped to transform what the Constitution had intended as a shared power into what he described to Saxbe as the exclusive "constitutional responsibility" of the President, with the Senate permitted the honor of ratifying the Presidential choice.

.....