Undemocratic Constitutional Amendments

Editorial Board
UNDEMOCRATIC CONSTITUTIONAL AMENDMENTS

In view of the recent amendments to our National Constitution, a recurrence to fundamentals would seem desirable in order to determine whether or not such amendments infringe upon the essential character of that great instrument, as it was conceived in the minds of its creators. And in thus comparing the original with its present day amendments, we wish emphatically to state, that what we shall say is intended in no sense as a defense of the evils toward which they were directed; but that our words are intended only to question whether or not the method by which the result was accomplished, was consistent with the fundamentals of our governmental system. As the first step in our comparison, let us consider briefly the purpose of the founders of the Federal government.

When, in the twelfth year of our independence, leading citizens from twelve of the original States met in convention, they had in mind, as their sole motive for so doing, the creation of a new entity, the single purpose of which was the government of those national and international aspects of the affairs of the States, which the latter, acting through their several governments, could not themselves govern.
They had not in mind the creation of a super-government with general supervisory and coercive authority over the several States; for they, as their rebellion against England demonstrated, believed the essence of democracy to consist in the right of the people to local self-government—that right which proclaims that government exists and laws derive their binding force only through and with the consent of the governed. It was not strange, therefore, that when they chartered the Federal government, they delegated to it only such powers as were strictly and necessarily National in character; and studiously withheld (as Sec. 8 of Article I proves) all powers over matters of purely local concern to each of the States.

But strictly defined as were the powers of the new government, the people at large, manifesting their determination to secure to themselves in perpetuity their rights to local self-government, further defined and restricted those powers. (First Ten Amendments.) Especially significant is the Tenth Amendment, which solemnly declares the will of the people, that the States, or the people, do not concede to the Federal government any powers outside of those delegated in the words of the Constitution.

On the other hand, the Constitution itself, inclusive of the First Ten Amendments, demonstrates that it was not the intent of the originators of our dual system of government to create by the Constitution, a means whereby to restrict the lawful powers of the States in local self-government. True, the Constitution provides for compulsory comity in a few respects between the States; (Art. IV) but these are essentially matters of national scope. And the prohibitions upon the States found in Sec. 10 of Art. I, are for the most part, merely confirmatory of the powers over certain national matters which the Constitution had already delegated to the Federal government. The remaining prohibitions, such as those forbidding enactment by the States of bills of attainder, ex post facto laws, or laws impairing the obligation of contracts, are merely prohibitions upon the potential abuse of the power of local self-government; and they do not in any manner take from the States or the people any lawful powers of self-government.

The Constitution shows, therefore, the intent of the founders of our government, that the Federal government was to possess national powers, and those only; and that the States, with a very few inhibitions upon the possible abuse of their powers, were to
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retain supreme dominion over all matters of local concern. Or, as more accurately stated by the Great Expounder of the Constitution, "The genius and character of the whole Government, seems to be that its action is to be applied to all the external concerns of the Nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State which do not affect other States, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the Government." Chief Justice Marshall, in Gibbons vs. Ogden, 9 Wheat. 1, 195.

Unfortunately, we of the later generations have not been mindful of this basic, fundamental division of powers in the plan of our dual system of government; and as the amendments which we have added to the Constitution show, we have deviated radically from that logical plan.

For proof of that assertion, we need only look to the Eighteenth Amendment. In adopting this to the Constitution, we have wholly disregarded the fact that the liquor question is a purely local matter of a personal nature; and that just as clearly as it is within the field of local police regulations of the several States, it is out of place in the charter of the Federal government. Since this amendment takes from the hands of the people their right of local self-government in the disposition of the liquor problem, it can hardly be said to be consistent with accepted ideas of democracy. This situation, however, would never have arisen had we followed strictly the division of governmental powers as it was made by the founders of our system of government.

Again, the fact that we have disregarded the fundamental plan according to which the powers of the States and Nation were separated, seems only too well evidenced by the Nineteenth Amendment. As before indicated, we have no quarrel with woman suffrage itself, but we do believe, that this question, insofar as the right to vote at State elections is concerned, is a question proper only for solution by the several States.

Why do we complain of the past? Because we are solicitous for the future. We believe it has been demonstrated, by the Eighteenth Amendment particularly, that the people of America today do not understand, as did the Americans of a century ago, the true nature and plan of their Constitution. We are of the opinion, that if that lack of understanding continues to exist, it will prove to be the undoing of all true democracy in the United
States. No other result can come from amendments which take from the people of each State, their rights of local self-govern-
ment. But even now there is proposed another amendment which will invade the rights of the people in that respect. We refer to that proposed amendment by which it is sought to abrogate the control of the States, or the people, over the divorce problem. Now, while we recognize fully the evils resulting from the present lack of uniformity in the divorce laws throughout the United States, we nevertheless protest, that the end sought to be gained by the proposed amendment does not justify a means subversive of American principles of government; and further, that the desired end can be just as well secured by the enactment of a Uniform Divorce Act by the legislatures of the States. We must never forget that the States are sovereign powers; that through them the people enact laws for their local government; and that therefore, to take from the States jurisdiction over purely internal affairs, is to take from the people of each State the power to govern themselves.

Will the people of America realize before it is too late, that constitutional amendments which thus take away the power of local self-government, will eventually transfuse to the Federal government the entire vitality of State sovereignty? Will they awake to the fact that such amendments make impossible the exercise of that democracy of which they so proudly boast? Have they not found proof of that fact in the operation of the Eighteenth Amendment, whereby the people of many of our sovereign States became bound by laws to which they had never given their consent? Cannot they see that they are getting away from the cardinal principle of democracy, that all just powers are derived only from and with the consent of the governed? Or will they disregard these evidences of a vanishing democracy, forget the lessons taught by the ages, and substitute for the government of Washington, Jefferson and Hamilton, the archaic continental system of bureaucracy?