

CHAPTER XVII

THE CONSTITUTION

CONSPIRACY AGAINST THE CONSTITUTION

It is curious how there has been a lull in the agitation which was rife some years ago, to get rid of the Fourteenth Amendment, which is so obnoxious to the social welfare people. This agitation can be traced through many of the books written by the Executive's supporters who sowed much of the New Deal seed. It is noticeable in the writings of Dr. Frankfurter, Mr. Berle and Mr. Means, Mr. Chase and numbers of others. If one reads carefully Mr. Justice Cardozo's *The Nature of the Judicial Process*, it will be found there in many places, put as politely and subtly as a distinguished jurist can suggest it, without infringing the canons of dignified legal procedure. It is property the advisors of the President seem to be after; the property of private individuals, for they find that confiscation practiced through the process of income tax penalties may not yield sufficient to keep the poor and needy on their voting register as long as they desire. I threw out a warning in *Sociocratic Escapades*, published four years ago, that the Fourteenth Amendment stood in the way of the political pilgrim's progress, and that we were speedily approaching the time when a frontal attack would be made upon that section of the Constitution of the United States which protects the property of individuals. The following I wrote in the spring of 1934:

“One difficulty has stood in the way. Under such a system of taxation as ours, it is no easy matter attempting to get a big lot in heavy death-duties and income taxes, sufficient, that is, for the poor, without cutting down the expenditure which goes to politicians, bureaucrats, and all the flotsam and jetsam who depend on the spoils system. It would never do to retrench expenditure enjoyed by the job-holder. He has a social value which no party can afford to overlook or minimize. Therefore, some way must be found, other than by means of income tax and death-duties, to force these rich people who are not job-holders, to make sacrifices in the interest of humanity; that is, humanity not including themselves. The difficulty lies in the Fourteenth Amendment; and in that part of it which says:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.”

“It is unnecessary for us, at present, to go into the question of how this instruction arose. It is there and stands in the way of those who wish to be legislative humanitarians. But I think its days are numbered.”

THE PREAMBLE

When I wrote of a conspiracy against the Constitution, friends of mine, lawyers of distinction, told me that I had joined the ranks of the calamity howlers. I notice now, when they get their income tax forms to fill out, their tempers show that they are eligible for membership in that immortal band who showed their utter dislike of taxed tea, and made it possible for a

Constitution for this country to be written. Few people seem to think that the men who drafted it had a very good reason for doing so. It might be pointed out that it is a document that states shortly and clearly why it came into existence, for the preamble declares:

“We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, 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.”

Here it will be seen that posterity depends on union, justice, tranquility, defense, general welfare, and liberty. All these concepts stand together. There can be no general welfare without justice and liberty. There can be no tranquility without justice and liberty. And the drafters and signers of the Constitution were very wise people, for they not only made the document to protect themselves, but to protect their progeny. And think of the experience of national affairs these men had! Under George III and North they experienced, according to the counts set out in the Declaration of Independence, nearly every tyranny the State can exercise. Therefore, no matter what disability it might contain, it is a document born in the fire of revolution, reared in the heat of debate, tried in the vicissitudes of growth of the nation, and accepted, until today, as the basis of the law of the land. It has been amended and strengthened, and wisdom will not fall short when the time comes for it to be amended judiciously again. But the principles of the document are inviolate, and these principles are those which lie at the root of the English Constitution: taxation with representation and redress

of grievance before supply. The basic law of the United States is the basic law of England; the laws that were abrogated or ignored by George III and North.

FRONTAL ATTACK

The conspiracy I referred to must have ripened shortly after November 1936 for, as events have turned out, it appears clear to me that the frontal attack upon the Fourteenth Amendment is now in progress. Every privilege and immunity referred to in the Amendment has been abridged. Persons have been deprived of life, liberty and property without due process of law, and as for the equal protection of the laws of the land extending to any and every citizen of the United States, we see every day of the week now that numbers of persons are denied this right. It is only necessary to mention the strikes that have taken place in which the due process clause is set at naught with the sanction of the government, not only of a State, but of the nation. We also see that injunctions of the court are utterly disregarded by the governors of States. But worse, in direct defiance of one of the chief principles of the Constitution, we see class set against class, and the instigator is no other than the Executive himself. If this is not a frontal attack upon the Constitution, and particularly the Fourteenth Amendment, what is it?

THE GENERAL WELFARE

Those who would interpret the preamble to the Constitution should understand before making a declaration of its meaning, that the instruction to "promote the general welfare" refers only to those conditions which are political in a Federal sense. It could have no

reference to local economic or social disabilities, because it is clearly set out in the articles that the powers reserved to the three branches of the government are Federal in their nature. Economic and social conditions, not specified in the provisions of the Constitution, are matters which concern the administration of the States.

The true position regarding the matter of general welfare was laid down by Thomas Jefferson in 1791, in an *Opinion on the Constitutionality of a National Bank*. He lays it down that the government must not "lay taxes *ad libitum* for any purpose they please; but only to pay the debts or provide for the welfare of the Union. In like manner, they are not to do anything they please to provide for the general welfare but only to lay taxes for that purpose." (Italics Jefferson's)

Moreover, it is clearly stated, in Section 8 of Article I, that all revenue raised by the Government is for Federal purposes. Union would have been impossible if the central government had reserved to itself powers for directing, or even advising, a State or States within the Union, regarding matters which are not specified as Federal. The Constitution lays down clearly what it can do, and what is not named in the document is left to the jurisdiction of the State or States. The chief reason for the particularization of powers the Federal government may exercise, was that there should be no friction between it and the States. Indeed, the preamble to the Constitution is especially directed to the Federated States, for Union is the goal it would reach. There is nothing suggested in the preamble which extends further than the precise powers conferred in the provisions of the articles, and those who would interpret the general welfare phrase in an economic or a social sense for local humanitarian purposes, are guilty of

importing into the compact an idea utterly alien to the framers of the document.

It is clearly intended that the States are perfectly capable of conducting and attending to their own local affairs. Full responsibility for the economic and industrial conditions, which might arise in separate States, was accepted and clearly understood by each State which joined the Union. The demand that a wealthier State should be asked to provide for the unemployed and the bankrupts of a less wealthy State would have made union impossible.

But how has this administration interpreted the phrase, "promote the general welfare," which is in the preamble of the Constitution? Ostensibly, the administration has, through high taxation, squandered the money of the taxpayers, in relief and enterprises which bribe many of the people to vote for the party. It cannot be said, by any stretch of the imagination, that it is for the future welfare of all the people that this has been done. But, on the other hand, there can be no doubt that the administration has promoted the general welfare of those who call themselves Democrats, for the immediate purpose of electoral results.

There is, in addition, this to be considered regarding the spirit of the provisions: the nature of the economic and social conditions of the time. There was no need then to consider such questions as unemployment and relief, for as Jefferson said, "If a man (presumably a white one) did not care to labor for another, he could labor the earth for himself." There was no necessity whatever for including in the term "general welfare" such expedients as relief for the impoverished, and grants which would make the bankrupt solvent. All men not bound in slavery had to stand on their own

feet. It might very well be argued that a case could be made out against the Federal Government for taking over relief from the States. Indeed, it ought not to be difficult for a constitutional lawyer, if there be such a person in the country, to show that such an action was diametrically taken against the spirit of the Constitution, if it were not taken against the precise letter laid down in the sections.

The emergency, or emergencies, which the Executive detected when he was first inaugurated, were purely local and concerned the individual States. It is neither here nor there to say that the States were bankrupt and could not help themselves. There would be no limit to the matter of petitioning the Federal Government for aid if such a reason were accepted as valid. It was merely a political dodge which gave greater powers to the central government, and shifted a wholesome responsibility from States, which were only too glad to shirk their responsibilities. The result shows conclusively that the taxpayers of the wealthiest States had not only to provide forced relief for their own people who were in distress but had, also, to find relief for the impoverished in other States. If that is not an injustice which has injured domestic tranquility and made the blessings of liberty insecure, what is it? It can easily be demonstrated that, after the action referred to above, friction and instability have been increased, not lessened. It has pushed domestic tranquility back into the remote regions of hope, and it has struck a fell blow at the charitable impulse of the individual.

CENTRALIZATION

The whole scheme of the Federal Government taking over to itself powers which were considered, at the time

of the framing of the Constitution, as matters of purely local administration, is for the set purpose of centralized aggrandizement and political power over the courts. The sovereignty of the States is now a mere shadow, a fiction, indeed, of a farcical nature. This process has gone on apace since the close of the Great War. The politicians saw then what Jefferson feared: a great opportunity for creating a huge bureaucracy under the cloak of patriotism; they were able to make many inroads into States' "rights" which were not directly for the purposes of national defense. Now if a question were to arise as to the "right" of a State to protect itself against an action taken by the Federal Government opposed to its interest, a pretty situation would be created. The very matter which concerned Jefferson, Upshur and Calhoun—that of defining strictly the powers of the Executive, and hedging him about with restrictions so that he might be controlled by Congress and the judiciary—is here.

"PRINCES OF PRIVILEGE"

Therefore, who has done more to make democracy insecure than the Executive, and who so conscious that democracy trembles on the brink? When has the Executive surrounded himself with people whose aim it is to make this state one of compulsory cooperation? Every measure that has been so far promulgated by these people is anti-democratic. One may call them Socialistic or Communistic in their tendency; it scarcely matters which, but no one can say that any one of them is democratic, according to the notion of the term that has been held in this country ever since its inception. The whole of the Executive's campaign against business, against the so-called "rich," against "economic royal-

ists," the "opulent and greedy," and people who enjoy "well warmed and well stocked clubs," is aimed at setting up two diametrically opposed sections in one society. It is true these two sections have been adumbrated as the "Haves" and the "Have Nots" by writers on social affairs; but it is the first time the Executive of the country has lent himself to the methods of the soap-box agitator. How can he make democracy succeed when he talks in the same breath of the "princes of privilege" and the sufferings of the poor and needy? He might have done much to relieve the sufferings of the poor temporarily but, after five years of supreme command, he has not done one single thing to alter the power of the "princes of privilege."

The true economic royalists of this country are the land monopolists, and if the Executive has a fourth term, let alone a third term, he will not lift his finger to make democracy succeed by taking those values which are created by the community away from the princes of privilege into whose pockets they now go. If it is the Executive's intention to make democracy succeed, what has he done at this time, when he is pushed for money for relief to attack the great army of princes of privilege in this country who are exempt from income tax? In all probability, if he were asked about this matter, he would say that he had no jurisdiction, that such a reform concerned the States and the municipalities. And yet, he arrogated to himself, when there was a local emergency concerning banks, the power of dealing with it federally. Lay every State and municipal bureaucrat, who is now exempt from income tax, under the penalties that producers have to bear, and then talk about making democracy succeed. If the man who pays income tax, no matter what his income may be, is

a Democrat when he votes for the party in power, what on earth does the Executive call "the prince of privilege" who escapes paying his just share of taxation?

LAND SLAVES

There is no economic royalist in industry that is at all comparable to the one who holds land and does not use it himself. And, as the Executive has paid lip service to the work of Henry George, it may be taken that he is somewhat familiar with such works as *Progress and Poverty* and *Social Conditions*. Therefore, it might well be asked of him if he knows of any slavery which is so cruel as the slavery under the private ownership of land. A chattel slave knew he was a slave; he knew he was bought to labor and he knew the indentures of his servitude. He endured conditions every day which reminded him of his status. In a democracy such as this, the landless laborer is given what is called the freeman's certificate, a vote, but he is nevertheless a slave under a system of private ownership of the rent of land. He has to pay a fellow mortal for the right to use the earth, the only source from which he can draw his sustenance. In this case, the wretched creature is humbugged to the top of his bent by the politicians who want his vote. In the former case, the person was not insulted by being told he was a freeman. The one knows what he is; the other does not. The one makes governments; the other makes hay.