
The Revolution of 1913

The replacement of one ruling regime by another does not in itself measure up to a revolution; that can be accomplished by a gang fight or an election. A revolution is an effective change in relationship between rulers and ruled, a shifting of the incidence of power from society to the state, or vice versa. The American Revolution was an effective one not because it got rid of the British crown, but because it set up a weaker state, vis-à-vis society.

The Constitution was not necessary to the revolution. The new relationship between rulers and ruled was summed up in the Articles of Confederacy, and the country could have managed without another legal document. But we cannot argue with a fact: the Constitution of 1789 charted the course of the new state-society relationship as nearly as a political document could, and thus became the profit-and-loss statement of the preceding rebellion. The going ethos was individualistic; in his pursuit of happiness the early American felt quite satisfied to go it alone, accepting restraint only insofar as restraint was necessary for the security of property and the maintenance of

This article appeared in analysis (November 1950).

peace. He would tolerate coercion to restrain coercion, and no more. His experience with the British crown taught him to distrust political intervention, and his skepticism necessitated delimitation of the powers of the proposed establishment. Otherwise, he would have nothing to do with the Constitution.

We pervert the fact when we speak of the Constitution as a guarantee of rights; such an idea did not occur to the framers, nor even to those who opposed ratification. A Bill of Rights was incorporated into the document as a concession to the prevailing skepticism; but the Bill did not establish the prerogatives of the individual and the new government did not guarantee them; it simply agreed to respect them. They inhered, by common consent, in the individual as a matter of existence or as a gift from God, and the Bill was merely a memorandum to that effect. It was a warning signal that the authority of government must not transgress these prerogatives. As James Madison put it in one of his letters, the Bill of Rights was superfluous and unnecessary, and though he did not object to its inclusion, he was apprehensive lest a specific Bill of Rights should invite circumvention and thus defeat the purpose. After all, government simply has no business with rights, except to leave them inviolate.

The principal preoccupation of the framers of the Constitution was with restraints on authority, and those who opposed it argued the insufficiency of these restraints. Much has been said about the "checks and balances" incorporated in the Constitution, but entirely too little emphasis is put on the temper of the times that made these provisions necessary. In the light of the present abdication of social power in favor of political power, the early American attitude toward government is most striking. True, there were some who favored a strong centralized government, and some went so far as to advocate mon-

archy; but it is doubtful whether even these envisioned a concentration of power such as our present government wields. It was simply unthinkable. The revolution was in the hearts of men.

Not the least of the checks put on the new government was the limitation of its taxing powers. It was understood, of course, that authority is always in proportion to revenue, and if the latter could be held down, the former would take care of itself. About the only taxing power generally conceded to the proposed federal government was that of levying on imports; the "infant industry" argument carried weight, particularly as it implied retribution against the recent enemy. Hamilton argued that customs revenues would be insufficient and begged for internal excise taxes; his argument on this point, in *The Federalist*, is a remarkable piece of special pleading. If the government were not permitted to tax production, he said, it would have to ask for direct taxes. The principal direct tax, that on land values, he peremptorily dismissed on the ground that it would do hurt to the small holders who constituted the bulk of the population; this appeal to mass prejudice conveniently ignored the effect of land value taxation on the large estates in being, and on the prospects of the land speculators who were not without influence in the Convention. The other direct tax, that on incomes, he declared both unjust and impractical; in an agricultural economy, where trade on a barter basis is considerable, a levy on incomes would not yield enough to offset the unpleasantness of collection. His plea for excise taxes prevailed.

And there the matter of federal taxation rested until, as a war measure, the Lincoln administration put through a tax on incomes. The constitutionality of this measure was questioned, and the matter might have been brought to adjudication if the

tax had not been dropped, in 1872. Again the constitutionality of income taxation engaged the legal talents of Congress during the latter part of the nineteenth century. The argument was tortuous; yet there can be no question about the intent of the framers of the Constitution. Putting aside the written evidence, it is inconceivable that these leaders of a rebellion that was sparked by resentment over taxation far less oppressive would have countenanced a levy on incomes. That was not what the Americans fought for.

NO MONEY, NO POWER

The federal government rubbed along on what it could get out of customs duties and excise taxes until the enactment of the Sixteenth Amendment in 1913. It was a relatively weak government. It did not transgress the rights of the people because it could not. The balance of power was with society, as envisioned by the revolutionists, and the profits of their struggle endured in the immunities enjoyed by the citizenry: the immunities of property, person, and mind.

In respect to the right of property, the people were protected from encroachment by the strict limits put on the federal power of taxation. And because it therefore lacked the wherewithal, the government could not engage in ventures tending to invade the immunities of person and of mind. Thus, Lincoln's attempt at military conscription was unsuccessful because he did not have an army to ferret out reluctant draftees; when World War I rolled around, that lack had been overcome, thanks to the Sixteenth Amendment, and now encroachment is so effective that even peacetime conscription presents no difficulty; the person of every American may be impounded.

As for the immunity of mind, that was undermined by the

subtle process of subvention, when the funds became available. With public and private educational institutions beholden to the state for their existence, it was inevitable that the doctrine of benevolent statism should have insinuated itself into textbook and classroom; and as employment in the burgeoning bureaucracy presented opportunities, both as to emoluments and self-glorification, the minds of educators and educated became receptive to the idealization of the state. The doctrine of natural rights was gradually washed out of political science and social philosophy, and in its place we have the doctrine of permissive rights. In all the disciplines dealing with human relations, including, of course, the law, the primacy of the mass, rather than the individual, has achieved axiomatic position. It is a new American ethos, induced by state beneficence. Even the tax-exemption privilege granted eleemosynary institutions is not without its influence; because of it, as well as permissible deductions from income, contributions to school and church became more liberal before limits were put upon contributions; so that, perhaps unconsciously, even the teachers of Christianity have come around to minimizing the dignity of the individual and the glorification of directed behavior. Though it cannot be said that this inclination toward collectivism was deliberately planned, the state has not failed to use the funds at its command to propagandize itself into public favor.

Thus, the immunities written into the compact of 1789 have been eradicated by the proceeds of the Sixteenth Amendment. This one measure effected a change in the relationship between society and its ruling regime as thoroughly as if it had been done by invasion and conquest. The revolution of 1913 undid the profits of the revolution of 1789.

Our adjustment to the new relationship blinds us to the fact; perhaps an exercise in speculation will help to clarify it. Let us

imagine an impossible bargain entered into between the American colonials and George III: in exchange for the removal of all their disabilities and indignities he had put upon them, as enumerated in the Declaration, they offered him the power to tax their incomes. Assuming that he understood the proposition—which is as unlikely as their making it, since income taxation was only vaguely apprehended in those days—he would most assuredly have accepted it. Why not? A prior lien on all their production would have been an attractive price for the gewgaws of liberty they wanted. There would have been no revolution. The dominance of the British crown would have been assured, and the immunities of property, person, and mind enjoyed by Americans between 1789 and 1913 would never have been known. The American attitude toward the state would always have been what it is now; that is, one of dependence and subservience.

It requires no great imagination to draw up a bill of particulars against the present American state comparable to the indictment of the British crown in the Declaration, and one could well argue that there is more cause for revolt today than there was in 1776. The will, however, is absent.

POLITICAL PERVERSITY

Among the casualties of the revolution of 1913 is the doctrine of federalism. It is a casualty of major importance. From 1789 until the Civil War, the tradition of coequal authority between local and federal governments held firm, and even after that war (which settled only the question of secession), the states maintained their autonomy by virtue of their economic independence. The country was a Union, not a nation; it was only when the federal government obtained power over the citizens'

property that our constitutional structure was mutated. The events leading up to it are well worth reviewing.

It all began when the passion for leveling was let loose by a too literal interpretation of the doctrine of equality. The revolt against feudal absolutism was sparked by the truth that "all men are created equal," and envy was quick to turn this truth into a license for spoliation; the early American was no freer of covetousness than any other man. Recognizing this, the Founding Fathers sought to prevent the use of the powers of government for a program of confiscation; that, indeed, was the primary purpose of the checks and balances. However, during periods of economic distress, these safeguards of property rights regularly became the target of demagoguery; "hard times" were invariably blamed on the cupidity of the few. After the depression of 1873 the passion for leveling was whipped into a froth and there was a general demand for reforms, most of them aiming to break down the immunity of property safeguarded by the Constitution.

One of the reforms called for during the latter part of the nineteenth century had a substratum of economic sense. It was a demand for tariff reductions. The South (which had tried secession as a means of righting the injustice of the protectionist system) was now joined with the West in this demand. Its position was sound. The prices the South obtained for its raw products were set in the competitive markets of the world, while the prices it paid for manufactured goods were loaded with tariffs. The consequent disaffection found expression in the Granger-Populist movement.

This was grist for the mills of the Democratic party, idle and gathering dust for many years. The party was historically committed to free trade, even though its integrity had been more than tarnished by protectionism, and Grover Cleveland, its can-

didate in the campaign of 1892, grabbed at the ready-made issue presented by the agricultural malcontents. His sagacity went further. Contending that the loss of tariff revenues would go hard with the federal treasury, he proposed to make up the deficiency with an income tax. This was a direct appeal to the passion for leveling, for in those days it was taken for granted that an income tax would be levied on the wealthy only. Thus, a measure of justice was packaged with an appeal to envy into a successful campaign platform.

The income tax law introduced by the Cleveland administration (and declared unconstitutional in 1894) was indeed attached to a low-tariff bill. And up to the enactment of the Sixteenth Amendment, the political fiction was maintained that an income tax was needed to offset lower customer returns. This was pure hogwash; the state never relinquishes one form of revenue for another, for it is inherently incapable of restraining its lust for power. The highest tariff walls in the history of the country sprang up after income taxation was constitutionalized.

Ironically enough, the hope of those who favor free trade, or even lower tariffs, was forever done away with by the income tax. The state now has no economic interest in importations, no reason for encouraging them. Before the Sixteenth Amendment, nearly half of all the revenues of the federal treasury came from customs duties; today that source provides less than two percent. Were it not for the large revenues from income taxation, the state would be compelled by its own needs to pursue a tariff-for-revenue-only policy, rather than a protectionist policy. The current program of economic isolation—including quotas, so-called quarantine restrictions, and the devaluation of our money in respect to foreign moneys—would

simply be impossible. Foreign trade would be as important to the treasury as it is to the general economy.

A tariff-for-revenue policy, furthermore, would have made impossible the current urgency for a managed economy, for no state can go in for that sort of thing if the country's borders are open to the goods of other nations. Fixed or regulated prices cannot stand up against foreign competition, and an arbitrary scale of wages is likewise undermined. A hermetically sealed economy is the prerequisite of a managed economy. Our venture into socialism known as the New Deal would never have been undertaken if the barriers to foreign trade had not first been set up, and such barriers could not have been erected if the fiscal affairs of the government were dependent on tariffs; the income tax obviated that dependency.

THE UNION IS DISSOLVED

Protectionism breeds protectionism. The relief expected by the agricultural communities did not follow on the Sixteenth Amendment; their difficulties were rather increased. The further entrenchment of protectionism gave rise to the argument that if the manufacturers are to be protected from foreign competition, why not the farmers? Thus came "parity" prices and the whole program of taxing consumers in favor of agriculturists. Naturally, the disequilibrium in the economy was felt by other groups, who in turn clamored for relief through special privilege for themselves. Government by pressure groups is inherent in democracy, but it is held within limits by the amount of munificence the government can dispense. The income tax extended these limits to nearly the full productive capacity of the country. The power of confiscation this law conferred on

the government led inevitably to the taxing of Peter to quiet Paul, and back again, meanwhile gathering to the political machinery the luxury of unlimited coercion over both.

All of this naturally turned the attention of the citizen from home government to the national establishment; their loyalty followed their property. But, the final disintegration of the Union was effected by the rise of another pressure group, that of the home politicians. From the very beginning of the Union, congressmen were in the business of purchasing political preferment with whatever special privileges and grants they could wangle from the central authority; "pork barrel" legislation did not begin with the Sixteenth Amendment. But with the enlargement of the barrel, their preoccupation with it overshadowed any interest they have had in principles of government or in national affairs as such. Before income taxation, the best the government could offer the local politician in the way of bribery were land grants, franchises, a few posts in the limited bureaucracy and "rivers and harbors" bills. The price was not high enough to buy up the integrity of the people's representatives completely; a truly patriotic congressman was not a rarity.

The ink was hardly dry on the Sixteenth Amendment before the heretofore picayune grant-in-aid program began to blossom; in 1914 came the Smith-Lever Act establishing the Agricultural Extension Service with, in those days, the rather considerable initial appropriation of \$480,000; this was followed in rapid order by others; it would take a book of proportions merely to list the legislation passed since 1913 to favor political ambitions. It is a truism to say that the congressman is now only a liaison officer between his constituents and the Treasury Department. In fairness, one should not point to this consequence of the Sixteenth Amendment as evidence of the moral decline

of the politician; it is rather proof of a dwindling social integrity. That the politician unashamedly boasts of the prosperity his "influence" has brought to his community, by way of airfields, bridges, dams, and smokestacks, only reflects the general attitude. And the general attitude, visibly expressed in the endless safari to Washington in behalf of "worthy" causes, is in turn the result of the transfer of economic power from society to the state.

The swag principle of government is favored by the natural distribution of population and the resultant concentration of wealth in the more populous areas. There is no way out of it; some sections of the country offer greater productive opportunities than others, and there the aggregate of wealth must be greater. As a result of this economic phenomenon, seven states in the Union yield more to the income tax fund than they get out of it, and forty-one show a net profit. Covetousness is encouraged. Somehow, a Mississippian does not see any immorality in forcing a Pennsylvanian to support his local economy. His pride might prevent him from accepting a gratuity from a neighbor, but he suffers no such inhibition when it comes to a "foreigner." Thus, it has come to pass that the more numerous "poor" states have constituted themselves a congressional bloc (organized only by their common cupidity), intent on getting all they can from the seven opulent states. That is the bald fact; the justification for it is the doctrine of "national interest."

But, the *quid pro quo*, whether a Nebraska governor gets a new road or post office for his state, or the senator from Arizona brings home a chunk of patronage, is the abdication of local social power in favor of the greater monopolization of coercion by the central establishment. The price of favors is sovereignty. Just as the citizen was turned into a subject by the confiscation

of his property, so does the local politician transfer his allegiance from his community to the source of munificence. A Calhoun, struggling to keep inviolate the customs of his state, has no place in our *mores*; the people would not elect him. Nor could a governor of Rhode Island hold office today if he presumed to defy, as did several of his predecessors, the authority of Washington. State lines are practically obliterated, the states reduced to parish status, their politicians nationalized. The independent home government emerging from the revolution of 1789 has been destroyed by the revolution of 1913. The Union is dissolved.