

The Constitution and the Economic Interest

By HIRAM B. LOOMIS

SHORTLY before the meeting of the Constitutional Convention, over a thousand debtor farmers, under the lead of Daniel Shea, were repulsed in an assault on the arsenal at Springfield, Massachusetts. Shay and some of the leaders were arrested and tried for treason; but they were not hanged. It was clear that would not have been wise. It was time for sober second thought on the part of both creditors and debtors. And it was in this atmosphere that the Constitutional Convention met.

The above reflections are occasioned by the persistence of sharp attacks on our federal government under the Constitution. Lately I have been asking myself what change in the form of government I would advocate to further the reforms proposed by Henry George. My conclusion is that I would ask for no change whatever; I find that the federal government is still responsive to *the will of the people*. Witness the success of the suffragists in getting woman suffrage; of the prohibitionists in getting prohibition; and the anti-prohibitionists in repealing it. No reform can justly expect more than action backed by a majority; and experience shows that our federal government is always sensitive to anything approaching a majority. The work of the reformer is education.

Present-day attacks on the federal government seem to rely on Charles A. Beard's *An Economic Interpretation of the Constitution*. At all events, Vernon L. Parrington in *General Currents of American Thought*, and Albert J. Nock in *Our Enemy the State* have followed closely in Mr. Beard's footsteps, who states his position as follows: (page 17)

"Suppose, on the other hand, that substantially all the merchants, money-lenders, security-holders, manufacturers, shippers, capitalists, and financiers and their professional associates are to be found on one side in support of the Constitution and that substantially all or the major portion of the opposition came from the non-slaveholding farmers and the debtors — would it not be pretty conclusively demonstrated that our fundamental law was not the product of an abstraction known as 'the whole people,' but of a group of economic interests which must have expected beneficial results from its adoption?"

With varying emphasis Mr. Beard and his followers have accused the economic group that dominated the Convention of executing a coup d'état at the expense of the people. Mr. Beard states his accusation as follows: (page 218)

"The revolutionary nature of the work of the Philadelphia Convention is correctly characterized by Professor John W. Burgess when he states that had such acts been performed by Julius or Napoleon, they would have been pronounced coups d'état."

I maintain however, that the Convention did a statesmanlike job in a statesmanlike way, and that in particular it took all possible precaution to prevent hasty or unconsidered action in the adoption of the Constitution. Sober second thoughts, shown by the reversal of some of the first votes of the Convention, are evidence that even the group of economic interests could not entirely overlook the claims of that abstraction, "the whole people;" and the prophetic words, "we, the people," with which the Preamble to the Constitution begins, is a frank acceptance of the ideal government toward which evolution has been and still is leading us.

In a footnote Mr. Beard gives a fuller quotation from Professor Burgess:

"What they (the Convention) actually did, stripped of all fiction and verbiage, was to assume constituent powers, ordain a constitution of government and liberty, and demand a plebiscite thereon over the heads of all existing legally constituted powers."

The italics indicate a misstatement of facts for the Convention made no demand whatever. Instead it submitted the Constitution to Congress with the recommendations that Congress submit it to the state legislatures. The legislatures were to provide for elections in the state conventions to pass upon the Constitution.

Relying, I believe, on the authority of Professors Beard and Burgess, Albert J. Nock wrote as follows in *Our Enemy the State* (page 165):

"They planned and executed a coup d'état, simply tossing the Articles of Confederation into the waste-basket, and drafting a constitution de novo, with the audacious provision that it should go into effect when ratified by nine units instead of by all thirteen. Moreover, with like audacity, they provided that the document should not be submitted either to the Congress or to the local legislatures, but that it should go direct to a popular vote."

In the italicized section Mr. Nock is more explicit than Professor Burgess; but the misstatement of facts is essentially the same. Were those misstatements true, there would be good reason to call the adoption of the Constitution a coup d'état.

The American Revolution was more than a war with England; it was a fundamental change in government, and did not end with Yorktown. The Confederation did not provide stable government, therefore several states were asking Congress to call a convention to revise the Articles. In the preamble to the resolution that called the convention, Congress gave as the objective, "establishing in these states a firm national government;" but the resolution itself read, "for the sole and express purpose of revising the Articles of Confederation." These

two conflicting objectives are evidence of a division of the people into two groups, or, just as we today have people who want "one world," so they had people who wanted "one nation," and just as we have people who stand for states' rights, so they had people who stood for state sovereignty.

The Convention met. Two plans were presented: first the Virginia plan, which favored one nation, and later the New Jersey plan, which favored confederation. I think it is fair to say that the members finally became convinced that the only way to keep the American Revolution from becoming a fizzle was to unite the states into one nation. For this reason they decided squarely to face the issue, boldly to exceed their authorization, and to draft a new constitution instead of revising the Articles. They also adopted the following precautionary method of procedure, to provide against hasty or unconsidered action in adoption of the Constitution:

I. On September 20, 1787, the proposed Constitution was laid before the Congress.

II. On September 28, 1787, after nearly three days of discussion, during which a possible bill of rights and amendments were considered, Congress resolved to transmit the Constitution to the states without amendment or suggestion.

III. The state legislatures, in most cases, promptly arranged for the people to elect members of state conventions to pass upon the Constitution. (It should be borne in mind that every state was sovereign and took orders from no one. If the members of the legislatures did not discuss the Constitution, they have only themselves to blame).

IV. The elections were held and the people voted. Again there was opportunity for discussion.

V. The state conventions met, and the records of some of them show vigorous debate pro and con.

VI. During all this time, pamphlets, including the Federalist papers, were circulated; moreover the Constitution was discussed in the newspapers.

VII. On June 21, 1788, practically nine months from the day the Constitution was given to the public, New Hampshire voted to adopt. As she was the ninth state, her act made the Constitution effective. March 4, 1789 was set for the beginning of the new government; and Washington was inaugurated April 30, 1789.

VIII. Many state adoptions were made on condition that certain amendments be added to the Constitution; and the government was started on the understanding that this would be done. Congress collected these into twelve amendments, ten of which were adopted by the states, and became our Bill of Rights. They are essentially part of the original Constitution.

From beginning to end this was a work of real statesmanship.

Sober Second Thoughts

In two instances the Convention changed its attitude toward property or wealth during its session. Mr. Beard states the first as follows: (pages 164-5)

"It may be asked why, if the possession of property rights lay at the basis of the new system, there is in the Constitution no provision for property qualifications for voters or for elected officials or representatives. This is, indeed, peculiar . . . A motion was carried instructing the committee to fix upon such qualifications for members of the Congress. . . . A resolution was also carried to require a property qualification for the Presidency. Hence it must be evident that the lack of all property requirements for office in the United States Constitution was not due to any opposition of the Convention to any such qualifications per se."

The facts are that at first the Convention voted these qualifications, but later decided to leave them out. Does this change in vote indicate a change in opinion? Personally I believe that during those four months of discussion behind closed doors, men expressed opinions and were forced to meet searching questions. As a result they modified their views little by little, and left with marked changes in their opinions. To my mind all the evidence points to change from consideration of the claims of property to consideration of the rights of the people.

As I found no reference in Mr. Beard's book to the second change of vote to which I wish to call attention, I must go for the facts to Madison's Journal of the Convention, under date of Friday, July 13, 1787: Edition published by Cott Foresman and Co. pages 342-5).

"On the motion of Mr. Randolph, the vote of Monday last authorizing the Legislature to adjust, from time to time, the representation upon

the principle of *wealth* and number of inhabitants, was reconsidered by common consent, in order to strike out *wealth* and adjust the resolution to that requiring periodical revision according to the number of whites and three-fifths of the blacks."

(Here follow three pages given to wording the resolution and discussion.)

On the question to strike out *wealth* and to make the change as moved by Mr. Randolph, it passed in the affirmative,—Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—9; Delaware divided.

The conflict between the claims of wealth and of the people is clear; so also is the change in the vote. It could hardly be more emphatic. Its value as evidence of change of attitude on the part of the convention delegates is left to the reader.

"We, the People"

Back of the words, "We, the People" in the Preamble to the Constitution are those other words, "All men are created equal" in our Declaration of Independence. All the founding fathers knew that we had slavery, that we had bond-servants, and that there were many adult males who did not have the ballot. They also knew (for their background was English) the history of England. They knew for instance that the barons wrested Magna carta from King John; that the House of Commons rose in power from practically nothing; that it was not Cromwell, but the people of England who

flocked to the standard, that deprived Charles I of his head and of his kingdom. They also knew that the people of England, tired of the Puritanism of the Roundheads, gathered round the colors of Prince Charles and restored the Stuarts to the throne. They know that later the people of England, finding they had made a mistake, and acting through a Parliament for which many of them had never cast a ballot, de-throned James II, passed the Declaration of Rights, and summoned William and Mary to the throne. Back of this abstract idea, "the whole people," is real force, a constantly growing force. It had become great at the time the Convention met; it is much greater today, for today the House of Commons, by simply standing firm for a year or two, can go over the heads, not only of the King but also of the House of Lords. The Convention had the vision to recognize this process of evolution.

The Constitutional Convention must have presented an interesting picture. Try to imagine the members entering the convention hall — many were richly dressed, others wore modest attire. All were men picked by their communities for leadership in civic affairs. Both Benjamin Franklin and Gouverneur Morris had a love of country, though each expressed it differently. As these men discussed the future Constitution their faces took on a sense of responsibility. There was grim reality behind that abstraction "the whole people."

George Washington, in a letter to Edward Newenham in August, 1788, made this grave comment: "You will permit me to say, that a greater drama is now acting on this theatre than has heretofore been brought on the American state, or on any other in the world . . . the spectacle of a whole people deliberating calmly on what form of government will be most conducive to their happiness."