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A HUNDRED AND TEN YEARS OF THE CONSTITUTION.—PART I.

During the one hundred and ten years which have passed since the last of the thirteen "original" states adopted the National Constitution, fifteen positive and avowed amendments to, or alterations of, it have been made. The first ten were adopted together, and form what is known as the "Bill of Rights," and were practically contemporaneous with the Constitution itself. Of the remaining five, the first simply denies a certain "construction" to an existing article. The second makes some not very radical changes in the method of choosing a President and Vice-President by the Electoral College. The last three, important as are their practical effects, are closely in line with the "Bill of Rights"—the most drastic change being the absolute prohibition of slavery. These five amendments were declared in force in 1798, 1804, 1865, 1868 and 1870, and will all be noticed more fully later on. They are only mentioned here to bring out clearly the fact that the positive and avowed changes in the Constitution have not been numerous; and, it may be added, that they have not been fundamental. We shall find, on the other hand, that the unavowed and indirect alterations and amendments,

by way of judicial construction and by the gradual growth of certain practices now so customary that we have ceased to notice them, have so changed the Constitution as it framers and contemporaries understood and intended it, that it has all but lost its identity. It is not putting the case too strongly to say that the Constitution of the United States, which is the supreme law of the land to-day, is not that of a hundred and ten years ago, but merely a growth from it; and, indeed, it may be said that upon this growth there have been grafted certain limbs which would never have shot forth from the original tree. I shall endeavor to show the progress of these changes in the Constitution. The study will be of great interest, at least, to me; and I venture to hope that it will not be without interest to any student of American history. It is not my wish or intention to do over again what has already been so well done more than once—that is, to write a history of the Constitution in the ordinary sense. Of course, in order to arrive at what the Constitution really meant to its framers and contemporaries, I must necessarily speak of things which occurred before its adoption, and which led to its adoption; and, in so doing, I shall not be able to avoid repetition of what others have told before me. I shall hardly be able to avoid a few pages that will seem elementary to all who are familiar with the general theme; but the same difficulty confronts all writers on historical subjects, and all are compelled to meet it as best they may.

The Constitution of the United States, as finally adopted in 1789, contained a preamble and seven articles. These articles were divided into sections, the whole being shorter than many a modern statute. Our first inquiry will be, How did this instrument come into being, and what was it thought to be and intended to be, as a whole, by its framers and adopters?

Prior to the outbreak of the Revolution—I omit the adjective “American,” as that struggle must ever be to *us the* Revolution—there were thirteen distinct commonwealths, each entirely unconnected with the remaining twelve by any political bond. True, each was a dependency of the British Crown; but so were other colonies in different parts of the world. And

there were distinct differences in the character and closeness of the dependence upon the Mother Country. The colonies had widely different histories—their early settlements had not been the same. An account of these differences is not within the scope of this work, but the fact of their existence is of great importance, and must be borne in mind constantly in studying their gradual steps toward union. They are usually classed as provincial, proprietary and charter governments. But each and all of them had local legislatures or assemblies, one branch of which was chosen directly by the people. And it is impossible to read the history of any one of them without noticing how tenaciously they clung to the rights and powers of these legislatures or assemblies—how jealous they were of any curtailment or infringement of these rights and powers.

It was not, however, until the latter half of the last century, after having been harassed by arbitrary measures of the English Parliament and ministers for ten years, that anything like united effort to guard their rights was made. It seems that, without the consent of Parliament, they could not have united in a general government for any purpose, and it was nowhere contended that they could. When, however, in May, 1774, it was learned that by act of Parliament the port of Boston was to be closed, all the colonies felt that the time had come for action; that this attempt to punish Massachusetts for insisting upon her rights was a blow at every colony on the continent; and, after consultation, they determined on a General Congress at Philadelphia the following September—in fact, Virginia suggested an annual Congress—and in due time the first Continental Congress assembled, composed, in their own words, of “the delegates appointed by the good people of these colonies,” Georgia alone being unrepresented. As Curtis remarks, in his admirable History of the Constitution, “No precedent existed for the mode of action to be adopted by this assembly. There was, therefore, at the outset, no established principle which might determine the nature of the union.”

The idea, however, of united action by the colonies in Congress or convention assembled, was not entirely new. In 1765

all but four of them (Virginia, New Hampshire, Georgia and North Carolina) sent delegates, at the suggestion of the legislature of Massachusetts, to a convention in New York to consider the state of public affairs, and this convention made public declaration that the liberties of the colonies were founded on natural rights, not on royal charters, and denying the right of taxation without representation. But the Congress of 1774 was the first Continental Congress, with the avowed purpose of taking united action of some sort. The proceedings are, therefore, highly important to us in this inquiry. The first day of the session was taken up with the presentation of credentials, after the Congress had unanimously chosen Mr. Randolph, of Virginia, President, and Mr. Charles Thomson, Secretary. The credentials differed in many particulars—all alike, except one or two, which simply certify the appointment of the delegates, direct their representatives to consider with their fellow-members some means by which the present difficulties can be overcome and their recurrence prevented; a few are instructed to consider the best way of ending the "unhappy differences" between the colonies and the Mother Country. The delegates had been variously appointed—some by popular meetings held for the purpose, some by the committees of correspondence, some by direct vote (New York), some by special conventions. In one case—Rhode Island—the commission to the delegates nominated by the legislature was actually secured under the hand and seal of the Captain General of the province. They are commissioned to represent the colony "in consulting upon proper measures to obtain a repeal of the several acts of the British Parliament for levying taxes upon His Majesty's subjects in America without their consent, and particularly an act lately passed blocking up the port of Boston, and upon proper measures to establish the rights and liberties of the colonies upon a just and solid foundation." The number of delegates from the various colonies differed from two each from New Hampshire and Rhode Island to eight from Pennsylvania. It is very evident, from the tone of the credentials and from the circumstances, that each delegation was consid-

ered as a unit representing its particular colony, and that there was no thought of individual voting.

On the second day it was determined that each of the colonies should have one vote, there being no means of ascertaining their relative importance. They also resolved to sit with closed doors, and, further, to appoint two committees, one to "state the rights of the colonies in general, the several instances in which those rights are violated or infringed, and the means proper to be pursued for obtaining a restoration of them;" the other "to examine and report the several statutes which affect the trade and manufactures of the colonies." Two delegates from each colony were afterwards appointed on the first committee, and one from each colony on the second committee.

On Saturday, September 24th, less than three weeks after its appointment, the first committee brought in its report of the violations of American rights, which was immediately read, and its consideration postponed until Monday, Congress in the meantime to deliberate "on the means most proper to be used for the restoration of our rights."

There is pathos in this action, as it seems to me: the statement of the violations of their rights it was necessary to make formal and complete, but every member was but too familiar with them already, and all were eager to hasten *redress*, too impatient for this fondly hoped-for result to be willing to postpone for an hour consideration of means to accomplish it.

On Monday, the day to which the consideration of the report had been deferred, Congress was still too busy considering the remedy to attend to aught else, and they continued this consideration until the next day, when they unanimously resolved to boycott Great Britain and Ireland after December 1, 1774, as to imports, and the day after, as to exports after September 1, 1775, "unless the grievances of America are redressed before that time," and this a *century* before Captain Boycott was compelled to harvest his own crop! A committee was appointed to bring in a plan for carrying this resolution into effect.

This was the first positive, definite, step taken by the colo-

nies as a whole. A few days later, however (on October 1st), they unanimously resolved upon a "loyal address to his Majesty, dutifully requesting the royal attention to the grievances," etc., and appointed a committee to prepare it. In this, and subsequent resolutions, the expression "America," or "All America," is frequently used to designate the colonies collectively or the people of the colonies collectively: for example, they approve the resistance of Massachusetts to the late acts of Parliament, and say that if it is attempted to carry these acts into effect forcibly "*All America* ought to support them in their opposition." The idea of the essential oneness of the settlements in America was gradually, perhaps imperceptibly, growing.

Moreover, but a few days later, in a letter to General Gage remonstrating with him for raising fortifications, they say that he cannot be a stranger to "the determined resolutions of the colonies, for the preservation of their common rights, to *unite* in opposition to" the Acts of Parliament. And also, that they (Congress) have been appointed "guardians of these rights." They, in addition, unanimously resolve to prepare a memorial to the *People of British America*, setting forth the necessity of "firm, united, and invariable" observation of the measures recommended by Congress.

On the twelfth of October the committee appointed for the purpose brought in its report as to a plan for carrying into effect the non-importation, etc., resolutions. It was laid on the table for the present, its consideration resumed three days later (Saturday) and continued on Monday. The journal says, "the consideration of the *plan of association* was resumed," having previously called it simply the "plan for carrying into effect the non-importation, etc., resolution." On October 20th it was agreed to and signed. After reciting the grievances, they say that, in order to obtain redress, "we (the delegates of the several colonies, etc.,) do for ourselves, and the inhabitants of the several colonies we represent, firmly agree and *associate* under the sacred ties of virtue, honor, and love of our country" to carry out the non-importation resolutions, and mutually assist each other in lessening the inconvenience caused by

their action. They resolve upon a Committee of Observation in each colony to watch "the conduct of all persons touching this association," and to publish all cases of violation of it in the *Gazette*, so as to hold the offender up to public detestation and contempt, and thenceforth he or she was to be let severely alone and no more dealt with. This seems to have been the only sanction suggested, so that Congress did not entertain any idea of giving *governmental* powers of any kind to this "association." But, none the less, it was a *union* for certain purposes. With this direct purpose of uniting all America in the common cause, an address to the people of Quebec was prepared—in it is used this significant language: "Your province is the only link wanting to complete the bright, strong *Chain of Union*," "unite with us in *our social compact*," "that you should be invited to accede to our CONFEDERATION." And in the petition which they sent to the King, they style themselves "We, your Majesty's, faithful subjects of the Colonies of New Hampshire, etc., in behalf of ourselves and the inhabitants of those colonies who have deputed us to represent them in General Congress."

Such was the actual work of—such were the actual words used by—the Congress of 1774. All that its members said and did must ever be of interest. But a great part of it is foreign to our present inquiry. Writing forty years later Mr. John Adams does not treat his fellow-members in this nevertheless remarkable Congress with much respect. His letter to Mr. Jefferson of November 12, 1813, is amusing; but the only important sentence for us is that he says they were "one-third tories, another whigs, and the rest mongrels." However divergent their general views, they all recognized the urgent necessity of union. In speaking of the work of the Congress, Mr. Charles Francis Adams says: "Above all, and more than all, the foundations of a Grand American Combination had been laid, and the men upon whom its success would depend had been brought together, had been made to esteem one another." Mr. Henry said, in debate, "The *Constitution* of the colonies was founded on the broadest and most generous base," and in the underlying thought he was in accord with

many of his fellow-members, but not with all. For Mr. Galloway said truly enough, in a strict sense, a little later, "I know of no American Constitution. A Virginia Constitution, a Pennsylvania Constitution we have. We are totally independent of each other." Here we have the two extremes of thought; one the expression of a man who had a little earlier said, "I am not a Virginian, but an American;" the other that of one who, a few years later, joined the Royalist forces in New York. But the great majority of the members were not yet prepared, in the words of Jay, "to frame an American Constitution," and he no doubt also expressed their views when he said "The measure of arbitrary power is not full, and I think it must run over before we undertake to frame a new Constitution."

The idea of an annual Congress, though suggested by Virginia alone, was in the minds of many at the time. John Adams particularly favored it. But the time was hardly ripe. The fear was entertained that such an institution would "breed extremities and ruptures" and must either "be discontinued or we must defend it with ruptures:" (Letter of Joseph Hawley to John Adams, July, 1774.) It may be fairly said, on the whole, I think, that while all were agreed upon the necessity for united action—action as a whole—there was not yet a conscious desire for real unification, except on the part of a few of the—as the events proved—more far-seeing men. Yet it is impossible not to observe, if we attentively consider what was said and done, that the whole continent was really one in its greatest interests and in the fundamental requisites for the peace and prosperity of its inhabitants. The idea of unification was germinating in the minds of the people without their being really conscious of it.

Lucius S. Landreth.

(To be continued.)