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The Condition Precedent in the Constitution

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THE CONDITION PRECEDENT OF THE CONSTITUTION

Nearly a century and a half ago, the colonies, then united under the Articles of Confederation, declared their independence from England, and proceeded to draw up that immortal document that promulgated the rights of the governed, in their relation to the government. That document, the Constitution of the United States, stands today as the bulwark of individual freedom, and as the unappealable authority upon the delegation and reservation of powers.

The political and social background of our government carries with it, the story of the pioneers that tilled the soil, the dreamers that conquered the wilderness; but most important of all it carries with it the story of the liberty lovers that conquered the oppressers. In the mind of every man, woman, and child throughout the land, has been seared the phrase that "Taxation without representation, is tyranny," and that the tyranny of England in refusing the colonies adequate representation in parliament, justified the rebellion of the colonists. When the Revolution was over, and the hardships of war had welded the colonies; when the price of victory had been counted in the lives that were given at Bunker Hill, Valley Forge, and at Saratoga; when freedom and self government had been so dearly gained,— the framers of the Constitution decided that it should not be easily lost. They agreed that no government would be complete without an indesputable guarantee, that the people should at all times have adequate and equal representation, in that government.

In the Constitution that was submitted to the states for ratification in 1787, ther was carried the mandate upon Congress in the very first article, that the representatives in the House should be apportioned among the several states in accordance with their respective populations, and that such apportionment should take place every ten years subsequent to the first

Three quarters of a century went by, and Congress adhered faithfully to this mandate of the Constitution. Each ten years

the census was taken, and within two years thereafter the House was reapportioned in conformity with the growth and the shift of the population throughout the states. Then came the great Civil War, testing as Lincoln said "Whether our nation, or any nation, conceived in Liberty and dedicated to the proposition that all men are created equal," could long endure while the condition of slavery existed, and while the right of representation was upheld from a great portion of our population. In 1865 there were added the thirteenth, fourteenth and fifteenth amendments. The bondage of slavery was lifted and the discrimination against race and colored people was removed. The doctrine of individual freedom, equality, and right of representation became more firmly imbedded in the very nature of the American people. The reconstruction period followed; and since the mandate of reapportionment was in no way abrogated by the passage of the fourteenth amendment, Congress continued to perform her Constitutional duty, and delegated the representatives among her various states and communities in accordance with their numerical voting strength.

Another fifty years passed, and the Congress that had ordered the census of 1920 failed to pass the bill, necessary in authorization of reapportionment, based upon that census. Since that time, up until the present writing, Congress has not made any attempt to order reapportionment, with the exception of a feeble effort made at the last session of the Legislature, in which the House passed an eleventh hour measure, that was automatically killed in the Senate. In other words, for a period of more than seven years, Congress has convened and has annually ignored the Constitutional mandate. For nearly a full decade they have flagrantly shirked their duty, and even now present no united appearance of performing it.

The failure of Congress to so order reapportionment brings about the peculiar and at the same time lamentable situation, wherein a legislative body from which the highest law of the land is to eminate, is itself ignoring the very clause of the Constitution that created it. It presents the question of whether or not the power and validity of congressional legislation is not dependent upon the faithful fulfilment by that legislative body.

of the conditions under which they were established by the Constitution and ratified by the states. It naturally arouses the inquiry as to whether the citizenry of the nation are to follow the example of Congress, or whether they are bound by the ancient parental mandate of not doing what Congress does, but rather as Congress tells them to do.

Perhaps there is no law since the days of Salem witchcraft that is more fanatical in its effort to foist the opinion of some upon the entire body politic, than is the Jones Law. This was passed much as a matter of course by the present so-called duly delegated Congress. It makes violation of the Eighteenth Amendment a felony and carries with it the now famous Woolworth penalties of from five to ten years. One federal judge has become so enthusiatic in its enforcement that he has resurrected another federal statute which declares that he who knows that some one is committing a felony, e. g. the manufacture of more than one half of one per cent, is likewise guilty of a felony, and is therefore subject to penalty under the Jones law. Other laws similiarly drastic in their nature, and other sanctimonious attempts have been made by Congress in the last decade to reform the individual personal life of its citizens. Each session has seen its members hold up their hands in horror at the crime wave, each session has seen and even passed, laws telling mothers how to bear children, as directed by the Shephard-Towner act, or ordering parents where they may or may not permit their children to be hired, as is evidenced by the Twentieth Amendment that readily passed both houses only to be defeated by the states. At the present time there are bills up for consideration empowering Congress to dictate under what conditions individuals may and may not marry. If one were to look at the situation impersonally he would be amazed by the complacent wisdom that Congress assumed and by the self-righteous attitude which they have allowed to creep into the federal acts of the last seven years. One would be prone to suspect that like Ceasar's wife, they were above reproach, for certainly any legislative body that proceeds to govern the lives of its subjects so assiduously and so minutely, should be, above reproach.

Unfortunately, as I have already pointed out, such is not the

case. Congress cannot only be rightfully reproached, but likewise the very validity of the laws they have been passing can be seriously questioned. The right of Congress to operate as the supreme legislative body of the land, eminates from the people indirectly, and from the states in which the people reside, directly. Congress was formed, and has continued its position of power and national respect, simply because that power was delegated to it by the states. In other words the powers that Congress now have are those powers originally in the states and given up by them upon the conditions and limitations set forth in the Constitution of the United States. These conditions and limitations in the original conception of the framers of the Constitution were conditions precedent under which Congress could operate. The states contracted that they would delegate these powers and agreed that they should be bound, and that the citizens within the borders of the states would be bound, only upon the faithful performnace by Congress of all of these conditions. The failure to so perform, leaves logical ground for the belief that the acts of Congress subsequent to its violation of the condition precedent, in regard to reapportionment, are voidable at their best and more probably void from the beginning.

Just why Congress has failed to reapportion is problematical. It is almost unbelievable that they are ignorant of the mandate of the Constitution. Yet it is even more unbelievable that they are familiar with the mandate, but that it either displeases or annoys the honorable gentlemen that we have sent to Washington, and that they have decided to do nothing about it. The only charitable solution we can see is that the believe too firmly in denying to their left hands the knowledge of what their right hands are doing. Apparently they are familiar with the annoying provision, since they have made feeble efforts to conform with it; but are unable to perform their duty, for the simple reason that many of them are placing the political and state power, and of course, incidentally, self-preservation, above their sense of duty.

Yet while it may be discouraging for states like Kentucky, with a population less than that of the city of Cos Angeles, to give up part of its representation of eleven congressman, yet it is only fair that the city of Los Angeles be allowed more than

two representatives that it is now permitted. It seems only reasonable that those states that have increased tremendously in population, should have the advantage of that increase, and that those states that have lost in population, should justly lose in representation. The framers of the Constitution had not the thought in mind that the first article should be a condition only so long as it did not interfere with positions of incumbent congressmen. They did not intend that the Electoral College should be composed of Electors chosen from the "rotten borroughs" of the South. It was their intention that the Constitution should be adhered to, from the first article to the last, and that any violation of that agreement would be a violation of the condition precedent which the states imposed upon Congress; and thus invalidate all subsequent Congressional Acts.

—Walter E. Stanton