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THE LASTING EFFECT OF THE CIVIL WAR

By JOHN CAREY

In the past few years there has been much discussion in the Press, on the platform, and among the individual members of the legal profession, concerning the manifest tendency of our Federal Government to usurp forbidden powers and encroach upon the proper constitutional functions of the States. This is a problem which should challenge the interest of every American citizen, since the present policy strikes at the very foundation of the American theory of government. This latent danger contained in the federal obsession for extended power is shown by a brief historical review. I shall show first, that this tendency has always existed in our government; second, that prior to the Civil War it was held in check by the States themselves, and its dangers therefore were nullified. The third and concluding observation is that in recent years there has been a fundamental change in the American attitude toward government, traceable directly to the Civil War, which has resulted in a most distorted conception of the Constitutional theory of Federal Power.

What is the proper scope of Federal Power? To determine that question we need but search within the four corners of that instrument which created federal power—the Constitution. Our government was based on the proposition that before the adoption of the Constitution all power resided in the sovereign and independent States. Flowing from this principle then is the equally true proposition that since the Federal Government is the creature of the States, it has only such powers as are expressly granted to it. The Tenth Amendment to the Federal Constitution plainly expresses this idea: "All powers not delegated to the United States by the Constitution or prohibited by it to the States, are reserved to the States respectively, or to the people" With prophetic vision the statesmen of that day foresaw that the Federal Government would inevitably attempt to transcend its proper powers, and they expressly stipulated against it. From these few observations we see that the Federal Government in its original conception was one of delegated powers, each

enumerated and defined, with the great residuary mass of rights and powers vested in the States.

The truly great danger of the present situation is the fact that our States have lost sight of that principle, and for the first time in history have relaxed their vigilance. They do not realize as did those thirteen little colonies the disastrous possibilities invited by permitting the Federal mania for power to develop unchecked. Our modern States have been content to sit idly by in an attitude of passivity and calm acquiescence while the Federal Government has stealthily endeavored to rob them of their birthright. They have surrendered to bureaucratic control in Washington the management of internal and domestic affairs heretofore regarded as properly within the dominion of State control.

This is a vastly different attitude from that of the States in earlier years. Even before the Revolution conflicts appeared between the Royal Governors standing for royal prerogative and absolute power, and the colonial assemblies fighting for the enlargement of colonial rights and liberties. This ceaseless conflict between national and States' rights antedates our government itself. From the time of their birth until the advent of the disastrous Civil War it was the consistent policy of the States to guard jealously their rights from national encroachment. The glaring weaknesses of the Articles of Confederation most plainly reflect the extreme hesitancy of the States to surrender any portion of their sovereignty. The most perplexing problem of the Constitutional Convention, Madison tells us, was the establishment of a suitable balance of State and Federal Powers. Here again, it was the stubborn reluctance of the States to surrender even the slightest powers to a centralized government that almost disastrously disrupted the convention. Following the convention the delegates had to exert almost superhuman efforts before the States finally grudgingly ratified the new Constitution. Their insistence upon the Bill of Rights as further prohibitions upon the new government again evidences the distrust with which they regarded Federal Power. Later came their vigorous protests against the passage of the Alien and Sedition Acts, protests which were voiced in no mistakable form by the Virginia and Kentucky Resolutions; the

threatened rebellion of the New England States at the Hartford Convention in 1814 their strenuous opposition to the establishment of a National Bank; yes, and even the right of secession asserted by the Southern States in the furore of threatened Civil War; all these are but specific manifestations of the watchful, vigilant manner in which the States always attempted to check any invasion of their sacred sovereignty. It was the defense of States' Rights, the love of home rule, that inspired the pen of Jefferson in an earlier period, which fired the eloquence of such men as Clay, Calhoun and Webster in the decade preceding the Civil War and made it one of the most colorful periods in American history.

Thus we see that from the early colonial settlements down to the advent of the Civil War it was an incurable habit of Federal Power to overstep itself, and that it was prevented from so doing only by the concentrated action of the States themselves. And it was a devotion to the same ideal—State's Rights—that was responsible for the Civil War. The Civil War had a profound effect both upon the States and the American mind. It marks a crisis in our history; in its aftermath was wrought a most flagrant inversion of our theory of our government, and a violation of the spirit of the Constitution. Here we find the beginning of that dangerous, even fatal, change in the American conception of government. Although the physical ravages of the Civil War have long since been forgotten, the influence the conflict produced on the American mind is still sadly preserved.

Strong claims of Union were then asserted even at the expense of the submergence of the States. They were forced into submission to the demands and policy of the North. The Southern States were denied the right to secede, even when the Federal Government pledged itself to destroy slavery—an institution which they had always regarded, rightly or wrongly, as within the domain of State control. The States once more rose in defense of their rights, even at the cost of blood and life. Although it would be folly to deny the blessings of the ultimate preservation of the Union, nevertheless the demoralizing influence which victory for the Federal Government, as represented by the Northern forces, had upon the States is most deplorable. The despotic methods during the Reconstruction Era and the com-

plete domination by the Federal Government broke down State resistance, ruined the morale of the various States, and gave birth to the dangerous belief that the powers in Washington are supreme. The Southern States were reduced to military dependencies, their representatives denied admission to Congress, their leaders imprisoned and disfranchised, private property was confiscated, and the entire South finally left helpless before the inroads of political adventurers and freedom-crazed negroes. The Civil War marked the last stand for States' Rights; our history from that day to this has been the story of increased Federal Power and the slow but nevertheless sure extinction of the State.

Following the Civil War as if to complete the subjection of the States came the passage of the Thirteenth, Fourteenth and Fifteenth Amendments. These Amendments all dealt directly with the solution of the negro problem, and with the internal affairs of the Southern States. But what is most significant is that the very States to be affected by these Amendments were denied the right to vote on them! After the Civil War had been fought on the theory that the States could not leave the Union, the Federal Government, for expediency's sake, repudiated that principle, and declared that for the purpose of these Amendments, the Southern States were *out* of the Union. The irony of such a situation is obvious. Those once proud States were forced to bow in subjection before the Government of their own creation! Is it any wonder that people reading of this Federal dictatorship have become imbued with the idea that States have no rights? Is it any wonder that the American public today has such a distorted conception of the proper constitutional limits of Federal power?

"Eternal vigilance has ever been the price of liberty". And never before has there been greater need of vigilance in America than today. We have been educated from the cradle to regard the Constitution as an almost impregnable bulwark of our liberties. Yet unconsciously we march on to the polls and riddle that Constitution with Amendments. In our blind pursuit of material prosperity we have neglected to educate ourselves in the fundamental principles of government. We have developed a disposition to let the government take care of itself. Our na-

tional life is no longer characterized by heated political campaigns, nor by a thorough, intelligent, individual interest in public affairs. Participation in public life has come to be regarded as an irksome duty rather than as a privilege and an honor. What more appalling proof need be offered of the politically apathetic attitude of the American public than the fact that less than one-half of the qualified voters see fit to exercise the greatest heritage of their American citizenship—the right to vote?

The vote has passed into the hands of a few, who go to the polls blinded to the future consequences of their acts, seeking only the alleviation of a present evil, and vest some new power in the Federal Government, thereby robbing the State of one more right. That same distorted conception of Federal Power born in the chaos of the Civil War has firmly gripped the American mind, and is finding its fullest expression today. Four times within the brief space of seven years the supreme law of the land has been profoundly altered by Amendment. On every side we hear agitations for uniform Federal control of every conceivable human right, status, and activity. Uniform marriage laws, uniform divorce laws, federal child labor laws, minimum wage laws, and even the recent farm relief are typical instances of the modern trend. At present more than fifty proposed Constitutional Amendments are pending decision in the legislative halls throughout the nation. Is it too much to suppose, in view of the political apathy of the American people, and the tendencies of recent years, that all these agitations will culminate in still further mutilation of our Constitution, and complete destruction of the few remaining rights of the States? Unless the American people awake to a realization of what Constitutional liberties mean, there is grave danger that the United States will degenerate into an oligarchy,—or even worse, a mixed democracy.