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BOOK

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SPEECH

OF

HON. CHARLES DENISON,

OF PENNSYLVANIA,

ON

AMENDING THE CONSTITUTION;

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, JANUARY 31, 1866.

WASHINGTON:

PRINTED AT THE CONGRESSIONAL GLOBE OFFICE.

1866.

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HON. CHARLES DENISON

OF PENNSYLVANIA

OR

AMENDING THE CONSTITUTION

INTRODUCED

IN THE HOUSE OF REPRESENTATIVES, JANUARY 31, 1866.



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AMENDING THE CONSTITUTION.

The House being in the Committee of the Whole on the state of the Union—

Mr. DENISON said:

Mr. CHAIRMAN: I voted a few days since against a proposition to amend the Constitution of the United States in such manner as to prevent any State from levying taxes to pay debts contracted in carrying on the rebellion; and as my vote was different from that of all the Democrats of my own State, and most of the Democrats of the House, I have desired this opportunity to explain, not the vote, but the reasons for the vote, as a mark of respect for the opinions of my colleagues and the three hundred and fifty thousand Democratic voters in my own State, whose interests and opinions we are presumed, in some manner, to represent; and as I intend to give the same vote upon some twenty-five or thirty similar propositions now pending before Congress, I shall explain my views of the power to amend the Federal Constitution more fully on that account. And yet I am not unmindful of the fact that one who proposes at this day to discuss the power to amend the Constitution must appear like one repeating a tale twice told. And I further state that I do not speak for any side of this House, nor any party of men, not even for my own district, unless my constituents choose to adopt what I say; so that no one is accountable for such views as I may utter excepting myself.

The proposition against which I voted was introduced in this House, and under the pressure of the previous question passed without debate, without consideration, and with very extraordinary and indecent haste, considering the great power which it proposes to transfer from the States to the Federal Government and the Federal courts. Under this amendment the Federal Government would have the power and the right to inquire into the constitutionality of a tax levied to repair a township bridge; to stand between the State and its tax-payer, and

superintend the collecting and disbursing of all taxes in a State lest the debts paid may have been contracted in carrying on the rebellion; for a tax levied and collected for a lawful purpose might be diverted after it had reached the treasury and it would then be a most interesting employment for the Supreme Court to compel the State to refund to the citizens the taxes improperly collected or improperly paid out.

The only good which I can see in this very great change in the organic law of this nation, is that the Supreme Court would not be idle for the want of business, and its judges would not have time to travel about the country making speeches to the negroes, and in that way electioneering for the office of President. The provision will be found to be impracticable and worthless.

Nor would I desire that the Federal Government or any State government should assume to pay, or levy taxes upon the citizen to pay, debts contracted in carrying on the rebellion. God knows we have debts enough of our own to pay. Nor do I know of but one class of men who intend that the Federal Government shall assume and pay the debts of the confederate or rebel States, and that embraces the extreme abolitionists, or that class of men who claim that such States were alien enemies, and are now conquered provinces, for they well know that, as such, the conqueror takes the provinces with their burdens upon them; that if they are successful in thus holding, they must, according to the law of nations, pay their debts. And they must further know, that in pursuance of this well-settled principle of international law, Great Britain is even now gathering up her accounts to make a demand upon our Government for the payment of the debts of the confederacy, and if the theory of the Radicals be true, she will make you pay them. But I am not willing to pay their debts, nor in favor of so treating them as to make the Federal Government in any manner liable for them. Nor is it neces-

sary to alter the Constitution to meet this end, a remedy already being provided in the Supreme Court for the express purpose, and which would most assuredly decide against the payment of any such debt.

But, sir, I have other reasons for my vote, and to my mind higher considerations than can arise from taxes or debts in any form. It will be observed that the proposed amendment is to give the Federal Government the power and the right to dictate to sovereign States the debts which they shall not pay. This is a very extraordinary power to place in the Federal Constitution, to compel States to repudiate debts, a course which States, like individuals, are sufficiently prone to follow without the excuse which you propose to furnish. And this may be the wrong time to set the example of repudiation, until we see our own vast debt provided for. More than two thirds of this House appear to have no doubt of the policy or the power to make so great a change in the organic law of this nation. I deny the policy, and very much doubt the power, even though you hang upon your proposal the odious words "rebel debt." By looking at our files it will be seen that you have one proposition to grant the right of suffrage to certain negro soldiers who served in the war, another to grant certain lands in pursuance of some military order of one General Hunter, another that no State shall make any distinction in the civil rights of persons residing therein on account of color or descent, and another providing for colored persons sitting as jurors, and I believe some twenty or thirty others.

There is one peculiarity which runs through all of these proposed amendments, and that is, to add to the powers delegated to the Federal Government, and to that extent take from the reserved rights of the States.

These propositions have come upon us with such rapidity and profusion as to indicate that Congress had no other business to require its attention; and that the people had become so weary of "the best Government ever devised by the wisdom of man" that they had selected and sent here the most ultra men in the land to destroy it by usurpations of power under the guise of constitutional amendments.

In my judgment, it is a matter of grave responsibility to make vital changes in the organic law of a nation, and should not be done except upon the most urgent necessity, and upon points wherein we have the undoubted right, and at a time when the public mind is in condition for serious deliberation. Surely not when one third of the States are unrepresented in Congress.

It becomes us, as we regard the oath which we have taken, to look well at the charter under which we claim these powers, to see if we have the right to make these changes lest we place acts upon the record of this nation which are evidence of our presumption, as well as our imbecility, wickedness, and folly.

In order to understand what powers are placed under the control of two thirds of Congress and three fourths of the States, it is important to look at the condition of the States and the people before the adoption of the Constitution of 1789, as well as the Constitution itself.

In looking at that period in our history as a people, the first important paper that we find is the Declaration of Independence, standing comparatively alone, and marking the birth of a great nation. In that instrument we find three distinct propositions. The first is, "that all men are created equal;" but they did not state that as the reason for their independence, or they would have enunciated the fact, and claimed by virtue thereof the right to be free; nor did they regard this abstract proposition as the basis of government, excepting so far as it applied to themselves and the white people whom they represented, for they then had two distinct races of men in their midst who were not then, nor have they since, been permitted to realize the great truth "that all men are created equal." Neither the Indian nor the negro have been permitted to participate in the affairs of this Government up to this hour. The negro was enslaved and the Indian has been moved from land to land, and we appear to have kept him as an excuse for squandering millions of money, which we generally place in the hands of a well-organized band of thieves, who stand between the Treasury Department and the Indian; and that is a most fortunate tribe which receives one tenth of the money appropriated. And yet we continually hear repeated "All men are created equal."

The country is now filled with latter-day saints, who claim that it has especial reference to the negro, and are willing to sacrifice their own Government and the liberties of their own children to make it true. And yet it would be fair to presume that the great men who made our system of government understood the great truths which they uttered and the provisions of the Constitution which they had established, and were able to apply them to the ruling of the people.

The second proposition in that instrument is that all just Governments are founded upon the consent of the governed; and based upon this second proposition, the colonies no longer consenting to be governed by Great Britain because certain of their chartered rights as Englishmen had been violated and disregarded, the authors of the Declaration proclaim their third proposition, "that these colonies are, and of right ought to be, free and independent States." And to maintain this conclusion they enter into Articles of Confederation, put their men and means in a common fund, fight the battles of the Revolution, obtain their independence, and repudiate their debts.

The Confederation was merely an agreement between sovereign Powers, and provided, in so

many words, that each State should maintain its sovereignty in all respects wherein the power had not been delegated to the Confederation. The independence thus acquired left each State not only free and independent of Great Britain, but of each other, and, as such, they had a right to declare war, make peace, contract alliances with any other or foreign Power and do any and all things which sovereign Powers may do. And it was the representatives of these Powers that made the Constitution, and they stated in the beginning of their labors the objects at which they aimed. They represented sovereign Powers, and they intended to relinquish enough of the powers they represented to accomplish the objects of the Federal Union, and no more. They left us a very peculiar system of government, and if sovereignty means that power over which there is no superior, whose decrees when made are final, then our whole system of government is made up of local sovereignties, each absolute within its own local jurisdiction, and acting as so many checks against the flowing of power into a centralized despotism.

When the people of a township, a county, or State, have determined by ballot the choice of officers to execute the laws of each municipal corporation, they have exercised one of the attributes of sovereignty.

The States furnish the courts to protect the citizen in his rights of person and of property, the descent of estates, and regulate all of the domestic relations of the citizen under the Government. Each State is as entirely independent of every other State as if it were a foreign Power, and just as independent of the Federal Government within the reserved powers and in all respects wherein the powers have not been delegated in the Constitution. And the Federal Government is as completely a consolidated Government and as perfect a Union, within the delegated powers, as it would be if there were no State governments in existence; and each is as completely master of their respective powers as they would be if the other did not exist.

It is to the Constitution alone that we must look to ascertain what powers were delegated and what reserved, and the condition of the reserved rights, whether reserved absolutely to the States, or whether the reserved rights were to be taken away by the will of any other power than the people of the State for whose benefit the reservation was made.

Any person may invest a portion of his estate in the stock of a bank, and thus place that much of his earnings under the control of the majority of the stockholders or directors of such bank, but they do not thereby get any right to control that portion of his estate which he retains; that part of his property still belongs to him, and is under his control as much as if he had no interest in the bank, and he cannot be made to part with it except with his own free will. So it was competent for the States when they cre-

ated this governmental organization called the United States, by the Constitution, to delegate therein certain powers and the right to do certain things, and thus place the powers delegated under the control of the Federal majorities, and reserve certain other powers to be controlled by the people of each State, and for the exercise and control of which they were not to be answerable to any other power.

If the States did thus absolutely and unconditionally reserve these powers, then they cannot be taken away by two thirds of this House and three fourths of the States any more than the majority of the stockholders of a bank, in which I might have stock, could take my horse or my farm for the use of the corporation, because the States never placed these reserved powers in the common fund of powers to be controlled by Federal majorities. Their condition was the same as to these reserved powers after the adoption of the Constitution as before. The people of each State constituted a sovereignty before the adoption of that instrument. They were equally sovereign over the reserved rights after its adoption, and they cannot be taken away, except by the will of each State, unless there be something in the Constitution to authorize it; for a State, like an individual, cannot be bound further than it agrees to bind itself. Have the States parted with their absolute control over these reserved rights by agreeing to the power to amend the Federal Constitution? If so, then these powers were not reserved absolutely, but only retained until the Federal majorities as represented by two thirds of Congress and three fourths of the States may choose to transfer them, against the will of the people of a State, or it may be one fourth of the States, from the respective States to the Federal Government. This point ought to be settled by the Constitution, and I think it is. We find therein two provisions bearing directly upon the power of amendment. The first is the fifth article, and is in these words:

“The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two thirds of the several States, shall call a convention for proposing amendments, which in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: *Provided*, That no amendment which may be made prior to the year 1808 shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.”

And the other is the tenth amendment, and in the following words:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

The tenth amendment fixes the type of limitation upon the organic law, and makes the

Federal Government one of delegated and not original powers. We are not, therefore, to take any power by inference. The power to be exercised must be clearly expressed in the Constitution, or we cannot take it. We have in the fifth article of the Constitution the right to amend, for such is the word used, but not to make anew. It would not be an amendment to abolish this Constitution and adopt the old Articles of Confederation, or the unwritten constitution of England, or the laws and customs of France or Russia.

An amendment must, therefore, be of something germane to the instrument; it must be of something which we already have in the Constitution or it is not an amendment, but the making of a new Constitution, and would only be binding upon such States as agree to be bound by it, and could not become a part of the Constitution until every State should adopt the same. If one State should refuse its consent, it would not, by virtue of our Constitution, be binding upon any, because while that instrument provided that when it should be ratified by nine States it should be binding upon the nine, it made no provision either for making a new Constitution, nor for its own destruction.

This view would limit the amendatory power of the Constitution to the scope of the delegated powers from the States to the Federal Government, and prohibit the taking of any powers not delegated; and that the men who made the Constitution so understood it is shown by the instrument itself. The first exception to the to a power of amendment, in the fifth article, refers delegated power—the right to control foreign commerce. The second exception to the exercise of the power refers to the manner of voting by States or a method of doing business under the Constitution, and not a delegated power. As germane to the general power to regulate foreign commerce, an amendment could have been made prohibiting the slave trade before 1808, and for this reason a particular limitation upon the amendatory power of the Constitution was necessary to guard it. As an incident to the legislative power vested in a Congress of the United States in providing methods to do business under the Constitution, it would be competent to change the Constitution by amendment in such manner as to deprive a State of its equal vote in the Senate, and to prevent this the second particular limitation is found in the proviso.

From this it appears that the framers of the Constitution regarded the amendatory power as applicable to its delegated powers or grants and its methods of doing business, and for that reason made these exceptions to the exercise of the power. These exceptions furnish the rule for the exercise of the power of amendment. Under this rule you may so modify the Constitution by amendment in its delegated powers and methods of doing business as to

give it upon its own principles a more complete effect.

This construction would give sufficient scope and influence to the power of amendment in the fifth article. It can act upon any and all of the delegated powers. Two thirds of Congress and three fourths of the States may so change the Constitution as to make the justices of the Supreme Court elective. They might make the office of President to continue for ten or twenty years. Under the power to coin money and regulate the value thereof, you might so amend the Constitution as to get power to make a "greenback" a legal tender for the payment of debts; and so on through all of the delegated powers. But it is claimed as a fair rule of construction, that denying the power to amend in two particulars admits the power in all other respects; and this is the correct rule, and the men who made the Constitution so understood it, and to avoid the operation of this rule, and that there should be no *implied* or *constructive* powers in the Constitution, they adopted the tenth amendment, declaratory of its meaning, namely, that "the powers not delegated to the United States are reserved to the States respectively or the people."

The tenth amendment was in lieu of the article in the Confederation providing for the sovereignty of the States, and was placed there for the express purpose of keeping the reserved rights of the States from the control of the Federal majorities. And this restriction upon the authority or scope of the Constitution includes its amendatory power, as well as all other powers and grants it contains.

Unless the scope of amendment is limited, it is difficult to see the use of the exceptions in the proviso, or in what manner the restriction attaches to the power of amendment in the fifth article. The amendatory power of the fifth article in the Constitution is as much within the general restriction of the tenth amendment attaching to all the other delegated powers contained in the organic law as it is within the two special limitations contained in the proviso; otherwise the power of amendment could be resorted to in defiance of the two special limitations, and they could be taken from the Constitution by amendment. To assume this conclusion would not do justice to the patriotism or wisdom of the great men who made and adopted the Constitution for the welfare of this people.

This construction affords abundant room and scope for the amendatory power of the fifth article to act upon and modify any and all of the delegated powers, and gives a clear and distinct office to be filled by the tenth amendment. Each provision is consistent with the other, and the Constitution consistent with itself. For a period of more than seventy years no other use was ever attempted to be made of this power of amendment. The first ten

amendments to the Constitution were only declaratory of its meaning and in limitation of its power, and stand as a bill of rights for the citizen or a perpetual protest against any encroachment upon the reserved rights of the States or the people of the States.

The eleventh amendment was proposed in 1794, and is a limitation upon the judicial power of the United States. The twelfth amendment, in 1803, was a change in the mode of electing the Vice President, preserving the system of Electors as provided in the Constitution. It would be competent for two thirds of Congress and three fourths of the States to abolish the Electors and provide for a direct vote of the people for the office of President and Vice President by amendment; for it would be within the amendatory power of the fifth article, as it only relates to the delegated powers or a method of proceeding as provided in the Constitution. No attempt has ever been made to make a different use of this power of amendment until this war uprooted and overturned the foundations of all law, and substituted the wicked passions of angry men in their stead.

If the opposite view of this power be correct, then there is no limit to the power of amendment excepting the discretion of two thirds of Congress and three fourths of the States, and it renders the tenth amendment of the Constitution without force or meaning. This provision speaks of delegated powers. What are delegated powers? I employ an agent to buy me a farm; he acts under delegated power. The original power is with me, and he must act according to his power or he acts without authority. This provision also speaks of reserved rights. What! a reserved right taken away without the consent of the party for whose benefit the reservation was made! Was ever such a right called a reserved right? A person may sell his farm and reserve the minerals under the same with the power to remove them, or he may sell the minerals and reserve the farm. Upon this simple principle, which no one ever doubted, depends the title to millions of property in my county alone. What would the owners of those rich coal mines think of reserved rights if told that they could be taken from them without their consent? And yet you ignore their title by the construction which you adopt to take reserved powers from the States to the Federal Government. Your construction would enable you so to amend the Constitution as to strike from the fifth article the words two thirds and three fourths, and substitute the word majority; making our Constitution a mere barometer to measure the ups and downs of party, and worthless. The same power which will enable you to control the gathering of taxes in a State would enable you to remove from the Constitution the injunction that you shall guaranty to each State a republican form of government, and then abolish the Legislature and the local or State courts, and then the State

itself. Then the American Congress becomes what the British Parliament always has been, omnipotent, and the Constitution becomes an instrument of original and no longer delegated powers. Some of the majority in this House appear to talk as if there were rights reserved to the States, but they do not state what they are nor where the rights of the States cease and those of the Federal Government begin. Let them make the point where the Constitution has. Those not delegated are reserved. It cannot be that a solemn provision of the Constitution, like the tenth amendment, was placed there for no purpose.

No, sir, it was by this that the framers of the Constitution intended to seal up the reserved rights of the States, as a miser does his wealth, beyond the reach of profane hands. It lifts the Constitution above the filth of party politics and beyond the reach of party malice, and makes it truly national; for nothing less than the whole nation can change it in its powers. Like the heavens, which are over all, and send upon all the bright sunshine and showers, and "with the early and later rains" fill the earth with rich bounties and blessings for all, and yet is beyond the reach of all, so does this place the Constitution around and over all, protecting all, and furnishing prosperity and happiness and liberty for all, and yet is beyond the reach of any less than all. These amendments speak of the rights of trial, the qualifications of jurors, the right of suffrage. If these rights are not sacred, and sacredly reserved to the States, then we have none that are. These are the richest jewels of this people, any one of which is of more value than all the gems that were ever dug from the mountains and all the pearls the ocean ever concealed. And yet you propose to take this rich and priceless inheritance, which descended from our fathers, and bestow it upon another and a foreign race!

Such being my view of the powers delegated to the Federal Government and the rights reserved to the States, I cannot vote for any amendment of the Constitution, excepting such as relate to the delegated powers or the methods of doing business, giving it a more complete effect upon its own principles. The propositions before us are not amendments, but new and additional powers, and if adopted, would be usurpations and invasions upon the reserved rights of the States or the people. I cannot vote for any amendment which will confer any new or additional power to those already delegated in the Constitution. I am fully satisfied that sufficient power was delegated in that instrument, to say nothing of the enlarged powers by construction, and the still greater by congressional, executive, and military usurpations. But, as it is, this war never could have taken place if the rights of each State had been respected by Congress and the people of every other State. We have heard very much of "the first gun" in this rebellion.



That first gun was not fired by the rebels at Fort Sumter, nor by old John Brown in Virginia, but it was fired by the American Congress when that body passed the Missouri compromise and usurped the right to legislate upon the subject of slavery, a mere domestic institution, resting with the people of each State, as other domestic institutions now do; and that usurpation having been acquiesced in by the people North and South, led to the belief that at least one of the reserved rights, one of the domestic institutions, was liable to be influenced and controlled by Federal majorities. And the people of New England have been firing guns ever since; and after forty years of insult and outrage they had a return shot, ending in war; and after four years of most bloody conflict, not instituted but perverted for that purpose, slavery has been abolished. And I say, peace to its ashes! I would not disturb the slumbers of the dead if I had the power, and I hope that every State which ever was in this Union will ratify the amendment of the Constitution, that there be no more slavery in this land, and we shall then have at least one question settled forever.

If this war had been carried on for the purpose of compelling the States North and West to adopt slavery against the will of the people of such States, then you could appreciate the view which I now take, and you would point to the provision of the Constitution to which I have called your attention, and claimed that the organic law protected your domestic institutions and justified you in changing or abolishing them, as the people of each State might choose, and all men would have said that you were right.

A leading and highly respectable journal in the city of Philadelphia declares that by casting the vote to which I have alluded I have rendered myself infamous, and that I do not represent the true sentiment of my district. When I think I do not represent the views of my constituents I will resign and go home; but all the men in my district or my State could not get me to vote for any of these usurpations of power, even though they are called amendments. I must be permitted to keep my oath and support the Constitution as I understand it.

And it is to be expected that I should be misunderstood, misrepresented, and abused; such has been the sure fate of men with firmness enough to stand in the face of popular prejudice and uphold what they believe to be right. St. Paul dared to be a Christian, and for this he was twice beaten with rods, once stoned, and made to fight with wild beasts at Ephesus.

And before and ever since the ignorant and the prejudiced have been ready to sing peans and songs of praise to the party in power, however corrupt and wicked, and shout "Great is Diana of the Ephesians," "Release unto us, Barabbas!" and they can now add, "for he is one of us." But so long as I am in this House you shall have one vote for the old Constitution, and with God's help, one vote against all of your efforts to usurp new powers for the Federal Government; and that embraces all of your proposed amendments. I have no desire to change the Constitution which the fathers gave us, the Bible which they read, nor the God which they worshiped. But I do not expect this House to listen to me or heed what I say. "If they hear not Moses and the prophets, neither will they be persuaded though one rose from the dead." If you believe not the Constitution and the laws, neither would you be persuaded if God should send Washington and Jefferson and Jackson and Webster and Clay and all the dead patriots and heroes of our land to testify against you. You would call them old slaveholders or copperheads, and bid them go where they had business.

Your purposes are clearly indicated in your proposed amendments. The followers of the veiled prophet are about to see his features; the veil is being removed. But where is the caldron of heated oil? The people must prepare it. You are about to destroy the Constitution of our fathers. The "league with death and covenant with hell" must be removed and the Chicago platform of 1860 substituted in its place. Nor does it matter that it was a sectional, abolition platform; we must have a sectional, abolition Constitution. But is there no other sacrifice which can be taken in its stead? When Abraham was about to sacrifice his only son, Isaac, as he believed, by the command of God, and when he had built the altar and prepared the wood, another sacrifice was provided. I know that you have the altar and the wood ready to sacrifice our Constitution, and I ask you to call upon the deities which you worship and see if some substitute cannot be found; call upon the negro or the Republican party, and it may be that something less dear to the American people than their Government might answer. But if not, when you see the smoke ascending from the altar and the sacrifice, remember that it takes with it the liberties of your country and the liberties of your children, and that your children's children will condemn you for the sacrilege.