NINE GROUPS INSTEAD OF THE 48 STATES

A Proposal for Rebuilding the Structure of Government

In Order to Deal With Issues on a National Scale

By Delbert Clark

Washington

There is a growing sentiment—it is still too inchoate to be termed a movement—among certain members of Congress with advanced social views and a willingness to break with tradition in favor of drastic change in our form of government to facilitate nation-wide reforms frequently blocked by the nature of our confederation. Since, obviously, there is political dynamism in any proposal to abolish States in so far as they provide a check upon the Federal Government, no one has yet dared to broach publicly the thesis that the abolition would be in the public interest and is, in fact, a distinct possibility in the somewhat distant future. Yet there are those who feel that the change should be made.

The reasons advanced for such a revolutionary step are on their face sound enough. A study of our recent constitutional history, beginning with the imposition of a Federal income tax in the Wilson administration, reveals clearly that virtually every national economic, social, or political change has been brought about through constitutional innovations against Federal regulation of intrastate matters.

A Federal income tax could not be imposed until the long, tedious process of amending the Constitution had been carried through. A national prohibition could not be obtained without amendment of the Constitution. Equal suffrage for women had to go the same route. There is pending a constitutional amendment to permit the abolition, on a national scale, of child labor. None of these measures, good or bad, could be adopted without altering our basic law, and, what is of almost equal importance, none of them could be nullified without going through the same process in reverse.

But even these are relatively minor difficulties. It may well be that important changes are confronted with so formidable a hurdle as a two-thirds vote of both houses of Congress and a three-fourths vote of the States. The really alarming feature, these men assert, is the fact that in times of genuine emergency, when traditional State sovereignty must be forgotten for the common welfare, emergency acts of the Federal Government can be effectively nullified by the fact that there exist State lines which cannot be crossed by that great national policeman.

The time has come, they say, when we should realize that the functions of the Federal Government have become much more than those of a peace officer, when the governing problem of forty States into one nation calls for recognition, through revision of what has become a cumbersome instrument of government.

This talk has arisen largely under the New Deal which has brought to the fore urgent national problems that can be met only on a national scale; proposed remedies are often virtually checkmated by the fact of State sovereignty. The industrial control features of the National Industrial Recovery Act have been repeatedly declared unconstitutional in the inferior Federal courts; the controverted Section 7A, governing labor relations, has only recently been held unconstitutional except in interstate commerce, and the term "interstate" so construed as virtually to nullify the operations of the section under any circumstances.

ATTACKS on the constitutionality of the power development program of the Federal Government, on its regulation of national resources such as lumber and oil, on its efforts at slum clearance, have multiplied to such an extent that New Deal administrators go about these days with their fingers habitually crossed.

And it is not always the Federal foot that the shoe pinches. Only a few weeks ago a sovereign State—New York—was told by the Supreme Court of the United States that it must not regulate the price of milk within its borders if that milk was produced in another State, since that would constitute an interference with interstate commerce.

While many of the more advanced school do not necessarily quarrel with such decisions on legal grounds, they are tremendously linked by the system which makes them possible. It takes a very great judge indeed, they admit, to fly in the face of tradition and establish an important precedent. Even those who would shay away from any suggestion of fundamental change in our instrument of government believe some action is necessary, or if not action then change of method, if all reform legislation of a national character is not to be hampered by literal-minded court opinions.

Among those who believe the courts should accept social and economic change as a controlling factor in approving or nullifying legislation and who are profoundly dissatisfied with the artificial barriers provided by State lines is Senator Wagner of New York.

Senator Wagner, himself a lawyer and former judge of a high State tribunal and whose senatorial career of much social reform legislation, believes that adherence to the letter of a document might amount to a blockade of "public welfare legislation unless State frontiers cease to be barriers in the path of social advance."

But there are, he pointed out recently, two major considerations before the Supreme Court when it is called upon to determine the constitutionality or invalidity of a given law. The first is: "Does the legislation violate due process of law or infringe liberty of contract?" This, he added, "involves determination of whether the force of government has overstepped the boundary that separates it from freedom of the individual under our constitutional system." The second consideration is: "Has the Federal Government acted within the limits of its delegated authority under the constitution or has it overstepped the boundary that separates national action from State action?"

Neither of these boundaries, said Senator Wagner, should be fixed or inflexible, because "changing social and economic conditions transmit personal questions into social questions and State issues into national issues...even of what once was considered unconstitutional in that it infringed the rights of the individual, the Senator recalled a decision in 1904, when the..." (Continued on Page 23)
Nine Groups in the Place of our 48 States

A Proposal to Rebuild the Structure of the Federal Government in Order to Deal With Important Issues on a National Scale


NINE GROUPS IN THE PLACE OF OUR 48 STATES

The Revolutions, in the way they are being called for lack of a better term, have perhaps the genuine remedy is that whatever constitutional change may be necessary to get rid of the troublesome commerce clause. This clause, they contend, is nothing less than a minor survival of the idea that States might levy tariffs. The laying of tariffs between States was prohibited by the Constitution to which they consented, but the distinction between interstate and intrastate commerce was not allowed to remain. This distinction now is little more than a quibil, the Revisionists contend, and should be obliterated.

But how bring about this greater cohesion, this enhancement of state power? The Revisionists propose to call for a constitutional amendment to give the states full control over commerce, and where the amendment act which is a subject to a more concerted attack than perhaps any other New Deal law. The Senator's own Labor Disputes Bill, now pending, may well face similar attack if it becomes law.

The question of whether something like an interstate commerce, and is therefore subject to national regulation," said the Senator, summing up his argument, "depends upon a complex and interwoven economic and social facts quite as much as the question of whether a matter is affected with a public interest necessary to justify State interfered with 'freedom of contract.'"

However, Senator Wagner is not yet ready to join the ranks of those who would change the government to facilitate national reform. Looking back over the history and development of the Supreme Court, he sees with rising hope a slow but steady progress toward a broader social attitude on the part of that final tribunal. It is his hope and belief that the Court itself will solve the problems which he recognizes as so urgent.

Others are not so optimistic. Costs are extraordinarily acute at least they point out, and much harm has clearly been suffered through legal process. As in the case of the Supreme Court, one of the inferior Federal Judges, it is argued, easily tie up matters for a long period of time. Hence the interpretation of the Constitution.

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To the argument that elimination of this particular set of checks and balances, making it possible to enact all sorts of vital legislation by a simple act of Congress, would proletarianize the danger of large numbers of ill-considered laws being foisted on the citizenry, reply is made that, on the other hand, bad laws would be equally easy to get rid of.

There is no purpose to abolish the Constitution or deprive the Supreme Court of its self-asserted power to pass on legislation. There would still be that system of checks and balances, the whole Federal process remaining the same, except that State governments in such would cease to exist.

Strange as it may seem, a mutual of interest among the States for a number of years, the revisionists are able to present no plausible scheme for the reform of the States, sufficiency uniformity could be had in a simpler form of government. This would be the case of the Governor of a State, sufficiency uniformity could be had in a simpler form of government.

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The need for the variously-minded elements of the national interest in one another's activities, the need for a more representative federal government, the need for a new and more effective federal government, the need for a new and more effective federal government.

Obviously many quarrels would arise between these groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only the groups could not be solved, and it is only

NO ONE SEEMS TO HAVE WORKED OUT ANYTHING RESEMBLING A DEFINITE PLAN FOR SO ALTERING THE FEDERAL CONSTITUTION. THE VERY NATURE AND ORIGIN OF OUR FORM OF GOVERNMENT ARE SUCH THAT UNFORESEEN QUESTIONS ARISE. COULD IT NOT BE BROUGHT ABOUT BY A SIMPLE CONSTITUTIONAL AMENDMENT, AND IF SO, WOULD AN AMENDMENT OF SO FUNDAMENTAL A NATURE REQUIRE THE AFFIRMATIVE VOTE OF MORE THAN THREE-FOURTHS OF THE STATES TO VALIDATE IT?

ALONG FROM THE STRICTLY LEGAL AND MECHANICAL PROBLEMS INVOLVED, CLEARLY THE GREATEST DIFFICULTY IN THE PATH OF SUCH A PROFOUND REORGANIZATION OF OUR POLITICAL SYSTEM IS ADEQUATE PROFIT OF STATEHOOD. WHILE GENERALLY STRONGER IN THE EAST THAN IN THE WEST, THIS SENTIMENT IS A POWERFUL FORCE. THERE HAS APPEARED OF LATE A REMARKABLE RESURRECTION OF STATE CONSCIOUSNESS, A SELF-ASSERTIVENESS ON THE PART OF STATES SOME OF WHICH IN THE OLD PRE-DEPRESSION DAYS HARDLY KNEW THEY HAD BOUNDARIES.

WHETHER THE ISSUE WILL EVER BE RAISED IS A MOST QUESTION. THE REVOLUTIONS MAY NEVER BE HEARD FROM PUBLICLY—ESPECIALLY IF THE FEDERAL COURTS SOON EXPERIENCE A MIRACULOUS TRANSFORMATION AND BEGIN WITH UNANIMITY INTERPRETING LAW IN THE LIGHT OF SOCIAL CHANGE.

1935

In the 1930's when people rejected the idea of abolishing the states, the method by which the effort was to be continued is revealed in the very last two paragraphs of this article. Judges were selected who did "begin with unanimity to interpret law in the light of the changes desired by the designers of the new world order. Geographical, physical, economic, and social changes were then engineered to accommodate and promote the transition with the Congress supplying continual legislation to advance the effort.

BY KEEPING THE PEOPLE IN UTTER IGNORANCE, WHAT WAS ONCE A THEORY IN THE THIRTIES, THUS BECAME AN ACCOMPLISHED FACT. DUAL GOVERNMENTS HAVE BEEN IN OPERATION SINCE THE ABOVE UNITED NATIONS TEN REGIONS WERE INSTALLED. CONSTITUTIONAL GOVERNMENT HANGS ON A THIN THREAD. AS SOON AS OUR GUNS GET TAKEN AWAY, OUR CONSTITUTION AND INDIVIDUAL LAND OWNERSHIP WILL CEASE, WHICH IS A STATED GOAL OF THE UNITED NATIONS. YOUR STATE LEGISLATURE COULD STOP THIS AGAIN AS IN F.D.R.'S DAY.