

A NEW AMERICAN CONSTITUTION

BY WILLIAM MACDONALD

IT is not often that an historical society, especially one whose main concern has been with events which lie far back of the memory of men now living, is called upon to examine the essential fitness for the present generation of institutions whose history it has been at pains to study and to whose preservation it has, by the thoroughness of its research, made a worthy and enduring contribution. We have studied the past, if not exactly with entire intellectual or social detachment, at least in a temper more concerned with facts than with permanent social values. I do not know what measure of distorted history we might have had if we, as students of the past, had pursued any other course. We might have developed a philosophy, we might have elaborated an ethical code, but we should not have written history.

Yet we cannot be unaware of the extent to which, at the present moment in this country, the political system under which we live is being questioned. I do not refer at all to the more or less superficial criticism of existing political conditions which always voices itself wherever an active interest in politics obtains. There are always things that are going badly, there are always things that ought to be changed, and it will be a sorry day for us when the voices of the critic and the reformer are no longer heard in the land and we all speak well of ourselves. What I have in mind is something far more fundamental, a volume of criticism which goes to the foundations of American political society and examines the rock upon which it is built.

What I propose to discuss, as simply and frankly as I can, is the Constitution of the United States.

Let me first recall to you a few well-known historical facts, by way of placing the question in its proper historical setting.

The present Federal Constitution, the second written Constitution which the United States has had, was drawn up in 1787 by a convention of representatives of twelve of the then thirteen States, and went into effect in 1788 when eleven States, acting through conventions variously chosen, had ratified it. The Federal government for which the Constitution provided was organized in March and April, 1789. It does not appear that any State was entirely satisfied with the new instrument, and more than two hundred amendments were proposed in the ratifying conventions; but in no case was ratification made contingent upon the adoption of the suggested amendments, and the Constitution as accepted by the States was the same that the convention had approved. That the convention itself came near to shipwreck in the course of its debates only emphasized the fact that its work, like that of all such bodies, involved compromises in regard to which the convention attained agreement rather than satisfaction.

The Constitution of 1787 was not submitted to popular vote, and neither then nor since have the people of the United States been given an opportunity of expressing their opinion about it. For more than seventy years some of its most fundamental provisions were sharply questioned by great masses of the voters, acting through political parties, and the Civil War settled by force what could not be settled by discussion. The original Constitution, now more than one hundred and thirty-four years old, has never been revised, notwithstanding that Congress is empowered to summon a convention at any time for that purpose. Of the nineteen Amendments which have been adopted none has affected materially the fundamental form of

the government or remedied, save in one or two minor respects, any serious defect which the original Constitution contained; and none has ever been submitted to the verdict of the people. In every case the changes which have been proposed have been framed by Congress and acted upon by the State legislatures, the latter bodies often having been elected before the Amendment which was to come before them had been adopted by Congress and when, accordingly, no popular mandate regarding the question could be given. In the case of the latest Amendment, that ordaining national prohibition, a request for ratification by the people of the several States rather than by the State legislatures was refused by the advocates of prohibition, and the unprecedented period of seven years was allowed for approval.

What is this fundamental law in regard to whose sufficiency, after four generations of national development, the American people have yet to be consulted, and in regard to whose amendment they have never been given any save a remote and indirect voice? I hesitate to recite its familiar outlines to you, yet I cannot but wish that all who know them could realize fully their significance.

We have in the first place a rigid national government, more rigid in practice than any other government anywhere in the world. The President is elected for a fixed term of four years. The members of the Senate are elected for fixed terms of six years, the members of the House of Representatives for fixed terms of two years. These terms, it should be remembered, are actual terms, not maximum terms which may be shortened by a dissolution of Congress and a new election. It is true that the President or the members of either house of Congress may resign or be impeached, but no President has ever resigned, resignations in Congress are rare, and experience has shown that impeachment is too cumbersome and uncertain a process to be practically very useful. Wise

or foolish, honest or corrupt, rugged granite or hopeless putty, those who are elected serve out their chronological terms; and when, by chance, a vacancy occurs, the rigid constitutional system permits nothing more than the choice of a candidate to fill out the unexpired portion of the term which has been interrupted.

What is more serious is that the Federal government, in addition to being rigid beyond compare, is also irresponsible. With all the time-honored talk about the popular character of American government, there is hardly a popular feature about it. The President, who is often referred to as peculiarly the representative of the whole people, is not chosen by the people, but by a clumsy process of secondary election which had become hopelessly antiquated before it was ten years old, and which has repeatedly resulted in elections in which an overwhelming majority of the electoral vote represented only a minority of the popular vote—a result, indeed, which may happen at any time if more than two parties are in the field. Once elected, the President is in practice responsible to nobody. He cannot be called to account by the people, because the people did not elect him; nor by the electoral college, because that body goes out of existence once its members have voted; nor by the States, because the States as such are not responsible for his conduct and are only incidentally responsible for his election. He is not responsible to Congress save through the practically unworkable process of impeachment; while as for the courts, he may in practice respect their decisions or ignore them, as he chooses. He may defy Congress and the courts, rule the executive departments with an iron hand in flagrant disregard of the Constitution and the laws, and ignore every expression of public opinion in either domestic or foreign affairs—we have had Presidents who did all of these things for long periods—yet without any possibility of bringing him to book. So far as political characteristics go, the President of the United States, not in exceptional but in

ordinary times, resembles far more an autocratic Russian Tsar or a German Emperor under the old régime than a popularly-chosen executive with regulated powers in a constitutional democracy.

This is the political system, planted in the Constitution which "the fathers" framed, implicit in the fundamental law of the Republic, which we have long affected to describe as popular government. This is one of the potent forms of democracy for which, only a little time ago, the world was to be made safe. That there is in fact little of the democratic or the popular about it is apparent upon only slight inspection. Direct control by the people of any branch of their national government does not exist in the United States at all, and the various forms of indirect control are so rigid and mechanical in form and so hedged about with restrictions as to make popular control remote even where it can with truth be said to exist. Once they are seated in their offices, our elected representatives, in theory the chosen spokesmen of a free people, become in fact our rulers, responsible only to themselves. However obviously they may fail in the trust confided to them, however disastrous the policies to which they may commit the nation, they cannot be called to account until the stars in their courses have run the fixed chronological terms of two, four or six years. No change of public opinion can affect them, if they choose to disregard; it no amount or kind of criticism can stay their hands or force them to resign. They are the irresponsible rulers of a helpless people. A system of irresponsible tenure which no reputable business establishment would tolerate for a moment, and which if propounded today as a new theory of government would be received only with derision, is still bowed down to in the schools as one of the wisest creations of democracy, while the ancient instrument which embodies it is still praised by foreigners who probably never read it as, in Gladstone's famous

phrase, "the greatest work ever struck off at a single stroke by the mind of man."

One result of this system which "the fathers" contrived, and which there can be no question but that they intended should serve as a restraint upon popular initiative and control, is that political leadership in national affairs centres in the wrong place. The real control of national policy in the United States is in the hands of the President. Partly because of the natural development of the powers which the Constitution gives him, still more because of powers and prerogatives which he has usurped, and partly also because the legislative branch of the government, in which it was undoubtedly the intention that political leadership should invest, is so constituted as to be incapable of leadership of any kind, the President has become the actual head of the government, and exercises even in ordinary times greater powers than are possessed by any other ruler in the world. The control of administration is entirely in his hands. The veto power is a whip with which Congress, save only in rare instances, can be forced to obey. The courts are helpless without this support. The army and navy are at his command, he can make war and delay peace, his agents can arrest, imprison, punish, torture, banish, or execute citizens or foreigners or reduce them to penury, in spite of anything that Congress or the courts may do to prevent; while in the large field of affairs the policy of the nation, if so be the nation is fortunate enough to have a policy, is directly or indirectly of his creation. The President is their responsible controller of the destinies of the whole American people.

There is nothing extraordinary about all this so far as the Constitution is concerned. The Constitution, which knows nothing of political parties, makes no provision for political harmony between the two houses of Congress or between Congress and the President. Even if the executive and legislative branches of the government happen at any given time to be in the

control of the same political party, that control may be broken in two years, as it often has been, by the election of a new House of Representatives and one-third of the Senate. The very nature of the congressional system, with its two houses sitting for different elective terms and no common agency to bind them together and insure united action, makes political leadership by Congress impossible. And since national leadership there must be if we are to avoid chaos, the President naturally assumes a power which, in any truly popular government, is exercised only by the directly elected representatives of the people, but which the Congress of the United States, from the peculiar and archaic nature of its organization, is debarred from exercising at all. The President, who is not chosen by the people or directly responsible to them, rules the people, while the Congress, the members of which are elected by the people for different terms, is ruled by a President to whom it is not responsible.

It is time that his negation of popular government, redolent of the aristocratic theories and prepossessions which dominated English political philosophy in the eighteenth century, and antedating in the Constitution the French Revolution and the imposing democratic movement to which the Revolution gave irresistible impetus, were replaced by a system at once positive, flexible, and free. It is time that the control of national policy were taken from the hands of an irresponsible President and placed in the hands of elected representatives who are made responsible to the people who elect them.

Yet it should be apparent that this result, the only one which can insure the possession or the continuance of political or personal liberty, is not to be obtained by the time-honored process of amending the Constitution. The amending power, important and useful as it is, can at best deal only with details. We can by amendment remedy a defect or an omission here or

register some specific conclusion there. But the defects of which I have been speaking are not defects of detail. They are of the warp and woof of the constitutional system, ingrained in the texture of the stuff of which the Constitution is made, essential elements in its distinctive character and spirit. No mere process of amendment can reach such fundamental things as these.

Nor would the evils of the present system be removed by any merely formal changes such as from time to time have been proposed. The election of the President by direct popular vote, for example, instead of through an electoral college as at present, would not give us responsible government. The President would still hold office for a fixed chronological term, and would be as irresponsible, as far removed from control by the people who elected him, as he is now; nor would such popular election establish as between the President and Congress any closer connection than now exists. I have never been able to understand how anyone could seriously imagine that the present Cabinet, if its members were given seats in either house of Congress as has often been proposed, would thereby become a responsible Ministry or Cabinet in the sense in which the term responsibility is used, and properly used, in most other countries. The members of the Cabinet would still be appointed by the President and removed by him, they would still be responsible to him and not to Congress for their acts, they would continue to lack as they lack now the essential character of constitutional advisers of the executive. Responsible government in this country, the rule of the people which we have always had in theory and never have had in fact, is not to be attained by patching the old roof or adding a wing to the old structure of the constitutional system. We shall have responsible government only when the control of policy is placed in the hands of a Premier and Cabinet chosen from the Congress which the people have

ected, and answerable to the people through Congress for the course which they pursue.

Happily, there is no need of violent revolution to bring this result about. The Constitution itself provides for a Federal Convention to revise the Constitution whenever Congress chooses to summon one, and such a redrafting of the present Constitution as would substitute a responsible government for the present irresponsible one would involve no more fundamental changes than those which were made when the Constitution of 1787 replaced the Articles of Confederation of 1781. It would be a peculiarly fitting thing if this Society, whose long career dates from a time when the Constitution was in its infancy, were frankly to urge upon Congress the calling of a constitutional convention, to the end that the Union may be made still more perfect and that government of the people, by the people, and for the people may in fact be established among us.

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