

Unconstitutional Usurpation of Power—

Speech of Hon. James B. Utt of California

The sudden passing of our great and good friend, Congressman James B. Utt on March 1, 1970 shocked the nation.

He was a revered friend and a beacon of strength in the relentless fight to save our land and lives from the entrenched bureaucracy. In his distinguished service to human liberty, Mr. Utt made many statements and speeches of monumental importance. One of these was titled UNCONSTITUTIONAL USURPATION OF POWER, reprinted here.

The speech, made in Illinois, appeared in the Congressional Record of April 1, 1963. Taxing and spending has since skyrocketed, and his forecasts of expanding encroachments have proved agonizingly accurate, giving new urgency of Mr. Utt's suggestion that we give the LIBERTY AMENDMENT active support."

I have never demanded that people conform to my political philosophy, but, having been born an American, and expecting to die as an American, and in between the dignity of birth and the glory of death, I intend to live my life as an American. I have always adhered to the moral absolute that if something is right it is right, though all men think that it is wrong, and if something is wrong it is wrong, though all men believe it to be right.

MORAL ABSOLUTE

Your most distinguished citizen, Abraham Lincoln, expressed that moral absolute in this

manner: "If I am right, history will vindicate me, and if I am wrong, all of the angels in Heaven cannot justify me." And surely Abraham Lincoln had far more difficult decisions to make than any of us will ever be called upon to decide. But in these days of rapid communication, mass media, economic and political pressure groups, many of these decisions are difficult.

A hundred years ago, a great Civil War was being fought to test whether a nation conceived in liberty could long endure. Today, we are engaged in another civil war testing the same premise. It is not a cold war, but a hot war, which can be just as deadly. During that hundred years, the poles of the compass have swung in a 180° arc. At that time it was a question of whether or not the sovereignty of a State or a group of States transcended the sovereignty of the Union. That conflict was resolved in favor of the Union. The present conflict is whether or not the sovereignty of the Union transcends the sovereignty of the States which created the Union. That conflict has yet to be resolved.

MAN'S ETERNAL ENEMY

Our Founding Fathers were well aware that man's eternal enemy was government, whether that government was a dictatorship, a benevolent monarchy, a democracy, or a republic. Usurpation of power is the natural trend of every government. George Washington expressed it in these words: "Government is like a fire, which, if it is properly controlled, will light your homes and cook your food and run your factories, but if it is not controlled, it will destroy you."

Based on this concept, the Government of the United States was founded upon a Constitution of delegated powers with checks and balances of the executive, the legislative, and the judicial. Beyond these three checks and balances against usurpation of power, the rights of the sovereign States were well defined in the 10th Amendment, which reads as follows: "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."

There are no inherent powers derived from the Constitution to the Federal Government.

The powers were specific, enumerated, and limited. Government is not wisdom, it is not benevolent, it is plain brute force.

CORRECTED BY AN AMENDMENT

Washington, in his farewell address, said: "If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way in which the Constitution designates. But let there be no change by usurpation, for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always overbalance in permanent evil any partial or transient benefit which the use itself can at any time yield."

The Federal Government has ignored many of the provisions of the Constitution, while the sovereign States have condoned this usurpation of power, not realizing that these invasions of State sovereignty would lead to the ultimate subjugation of the States. On this I will have more to say later. Suffice for the moment to say that the Liberty Amendment is the vehicle which will return to the States their rightful possession of power.

There is only one basic issue, national and international, and that is socialism versus capitalism. They are incompatible, they cannot coexist, and only one system can or will survive the current conflict.

ARSENAL OF SOCIALISM

The graduated income tax, as provided in the 16th amendment, is the most deadly weapon in the arsenal of socialism. Its genesis rests firmly in the philosophy of Marx and Engels, two men dedicated to the destruction of capitalism. Capitalism is the American way of life, and let's quit apologizing for it. Why should we have a guilt complex over the system which in a century and a half brought this Nation from a weak and unimpressive beginning to the highest plateau of economic production, military strength, and the highest standard of living known to man?

America as a nation seems to have something of a guilt complex over our success, and feels that we are obligated to scatter our substance all over the world. This theory flies in the face of the Parable of the Talents, and violates the admonition that we should not cast our pearls before swine, "lest they turn again and rend you."

I should like to address a few remarks to the doctrine of preemption. This important subject attains its highest magnitude as it relates to the several States, and my remarks are especially directed to State legislators who may be present.

DOCTRINE OF PREEMPTION

It is a doctrine that has too long been endured by the States. It reached its height in an opinion rendered by the Supreme Court of the United States in the case of Steve Nelson. Nelson had been convicted under the anti-Communist laws of the State of Pennsylvania. The Supreme Court held that the antisubversive

laws of Pennsylvania or any other State had been nullified by the passage of the Smith Act, a Federal law in the field of antisubversive activities. There was no question as to the fact of Nelson's guilt, but the Supreme Court opinion held that no one could be prosecuted under State antisubversive laws, as Congress had preempted the field of antisubversion.

California had convicted the now-famous "Hollywood ten" for violation of our State antisyndicalism laws which had been on our State statute books for more than half a century. These 10 convicted Communists were released because of the Supreme Court decision.

In the Smith Act, there was not one paragraph, not one line, not one word, to indicate that Congress intended to preempt the field of antisubversion to the exclusion of the States. The Supreme Court decision, therefore, was a usurpation of legislative power by the judicial branch of our Government, and should not be tolerated.

For 5 years, Congress has been attempting to pass legislation to the effect that, if any Federal law did not specifically state that it was the intent of Congress to preempt any field of legislation, that field was not preempted. The Senate has refused to go along with the House on two separate occasions. I bring this to your attention to show to you what can and may happen in any other field of State legislation, especially in the field of taxation, which surely is one of the attributes of State sovereignty.

INSATIABLE DEMAND FOR REVENUE

The insatiable demand for Federal revenue, not only to run the constitutional governmental processes, but to make grants to the States so that the Federal Government can extend its control over the States, may very well cause the Supreme Court to rule that Congress has preempted the field of income taxes, next the gift tax, next the estate or inheritance tax, and even sales and excise taxes. This would deprive the States of most of their sources of revenue to provide the necessary State government, the State school systems, and other services. The States will then have to turn to Uncle Sam for financial assistance to administer State programs in accordance with Federal standards.

Federal grants to the States are like a blood transfusion in which you draw the blood from the right arm and transfuse it into the left arm, losing at least 15 percent in the transfer.

Examples of this Federal control are evident on every hand. The State of California could administer its welfare programs for half of the sum which it is now spending if our legislature were free to set up its own standards, but they have been warned by Federal administrators that if they do not conform to Federal standards, they can get no more money from the Federal Government.

Just last week, the U.S. Supreme Court rendered a far-reaching decision requiring that State criminal proceedings conform to Federal standards, and opening up purely State matters to the jurisdiction of the Federal courts.

CONSTITUTIONAL PROVISIONS

May I direct your attention to the fact that

the Federal Government has strayed from constitutional provisions and prohibitions of power in many other fields. Article I, section 8, paragraph 17 of the Constitution reads as follows: :

"To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding 10 miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;"

The Federal Government has no right to acquire land in any State without the consent of the legislature of that State, and even then it must be acquired by purchase. The price is not important. As an example, the Federal Government acquired the San Francisco Presidio with the consent of our legislature for the sum of \$1. This property happens to be worth over \$300 million today, but at least the acquisition fell within the constitutional provisions.

It was not until the admission of the State of Ohio that the Federal Government began to withhold the land which the Government owned when the State was a Territory. In California, the Federal Government has withheld and acquired nearly half of our land area—in Nevada, nearly 90 percent. The Federal Government not only withheld the land, it withheld the natural resources on the land, and now even claims the rain and snow that falls on those lands.

The Federal Government now owns and controls 20 percent of our industrial capacity, engaging in business activities not permitted to it by the Constitution. I have here a fact sheet published by Willis E. Stone, chairman of the Liberty Amendment Committee of the U.S.A., 6413 Franklin Avenue, Los Angeles, Calif. Fact sheet No. 1 lists 700 corporate activities, competing with private industry on a tax-free basis, which cost the American taxpayers \$20 billion a year in subsidies.

THE LIBERTY AMENDMENT

The Liberty Amendment provides that these corporations shall be sold to private industry and further provides that natural resources which rightfully belong to the States or to various State compacts shall be returned to the States or to the compacting States.

Some of these corporations have been returned to private industry. The synthetic rubber industry, formerly owned as a monopoly by the Government, has been sold to private industry. While owned as a Federal Government monopoly, this business was losing money, but private industry has turned it into a profitable venture, producing better rubber, and contributing millions of dollars in taxes. While the synthetic rubber program was sold at a profit, others are a total loss. Some of them will bring from 5 to 50 cents on the dollar, but, even if they were given away, the taxpayer would save money.

Some of these corporations we don't have

to worry about any more. For instance, the Cuban Nickel Company "grand design" which cost the American taxpayers \$100 million plus an annual loss, was taken over by Castro. Little did he know that it was bankrupting the American taxpayer and that it will probably bankrupt him.

The Abaca Production and Sales Program will be phased out this year at a total loss. This was our great experiment in growing hemp in Latin America, and was a dismal failure. It wasn't very good hemp, and could not be sold on the open market. But they did sell it, and guess who bought it? We did. Yes, one agency bought it from another agency—the strategic stockpile bought it, and we had to build a warehouse to put the stuff in while it rotted.

Incidentally, the Federal Government has a strategic stockpile which cost us \$8 billion to say nothing of the annual rental for storage. We have more than 20 years' supply of tungsten, and, believe it or not, we are still buying it.

YOUR TAX DOLLARS

Your tax dollars built the Rama road through the jungles of Nicaragua. It originally cost \$12 million. It is interesting to note that it starts nowhere and ends nowhere. So, after it was built, Congress appropriated \$3 million to survey the road. It would seem to me that it should have been surveyed first. When they surveyed the road, they found that the jungle had overgrown it, and so they are building it over again, at a cost of \$24 million this time around.

The Texas City tin smelter has been sold to private industry, and has gone from the red into the black.

Your tax dollars helped to give a new look to the Eskimo igloo. It started out as a lending program for igloos, but it didn't work out very well, so it was turned into the Alaska housing project, which was just as bad. Then they tied it in with seven other lending programs into one great liquidation program of about \$2½ billion; \$1½ billion has been lost with no recovery possible. Of the other billion dollars, about 70 percent has been recovered, and the balance is now being written off.

The Alaskan Railroad is another pet Federal project. Even tax and interest free, it is losing money, and should be sold or given to the State of Alaska, who probably won't take it on a bet. This railroad does have one distinction, however, it is the only railroad in the world that had a steamheated tunnel, with a small settlement inside to run it. The only trouble was, when the train came along, they had to open the doors, and everything got cold again. This was easily resolved. They routed the railroad around the tunnel. I could go on for hours regaling you with these stupid, costly projects, but I must hasten on.

FIRES OF BUREAUCRACY

The easy availability of revenue from the graduated income tax feeds the fires of bureaucracy, and supports foolish and unne-

essary projects. Bureaucracy is the invisible government which really governs the country. There are more administrative laws on the books than there are statutory laws passed by the Congress. The bureaucrats are men you have never seen. They govern without the consent of the people, and you cannot recall them from office.

You have heard of the "tree that grew in Brooklyn." I want to tell you about the tree that grows in Washington. The seed is planted by a new program calling for a very small expenditure, and then proceeds to proliferate like a cottonwood tree. May I cite you an example or two?

In 1948 there was an appropriation for the National Institutes of Health of \$3,76,311. This has now grown to \$166 million. They have so much money that they are at a loss as how and where to spend it, so here are a few of the activities of the National Institutes of Health.

"Empirical tests of a theory of interpersonal behavior, \$17,250.

"Juvenile delinquency in Japanese-American population, \$50,180."

That's an insult to the Japanese-American people, as that is one group in which I have never been able to find juvenile delinquency.

"A stereotactic atlas of the beagle brain, \$9,775.

"Role of behavior of frontal monkeys, \$15,998."

I could suggest a fertile field for that one.

"The establishment and maintenance of a monkey colony, \$13,816.

"Initiation and support of a colony of baboons, \$61,985."

EXAMPLES OF WASTE

These are just a few of the examples of waste and the duplication of what is now being carried on by private research.

I received a bulletin from the Department of Agriculture which was most enlightening. It told me that if I dropped a ripe tomato it would bruise more easily than a coconut, and that if I dropped it twice it would be very badly bruised. That was a real production of genius.

In a bill just passed by the Senate, the Bureau of Outdoor Recreation was made official. It was pictured as a small Bureau with a moderate budget. Last year it started with \$28,000 and 15 employees. This year, it jumped to \$1,100,000 with 95 employees, and next year it is requesting \$2,462,000 with 218 employees. If you project that for 10 years, the cost will exceed \$24 million annually with over 2,000 employees.

Here is the ultimate in bureaucracy: There used to be a room in one of the Federal buildings in Washington which had this legend stenciled on the door: "4156—General Services Administration, region 3; Public Building Service, Building Improvement Division, utility room, custodial." It was a broomcloset.

When Richard Nixon was Vice President of the United States and considered by many not to be the most popular man in the world, he was assigned two Secret Service

men. Now we have what is regarded as a very popular Vice President, but two Secret Service men are not enough to guard him. He now has 18 and is asking for 36 for the coming year, at a total cost of about \$300,000.

Without debating the pros and cons of the Peace Corps, I think you should know that, without the knowledge or consent of Congress, we now have an International Secretariat for the Peace Corps at a cost of \$150,000 a year. Congress did not appropriate the money. It was simply given to the Peace Corps by the State Department, which is always complaining about a shortage of appropriations.

NO INHERENT POWERS

You will recall that I said there were no inherent powers derived from the Constitution. For 150 years this was the accepted understanding by everyone, and it was not until the Justice Department intervened in a stockholders' fight in Chicago, and threw Sewell Avery, long-time president of Montgomery Ward, bodily out of his office, that the concept changed. At that time, the action was justified by Attorney General Francis Biddle when he said that Government can do anything not specifically prohibited to it by the Constitution. This was one of the most outstanding pronouncements ever made, and had the effect of reversing the idea that the Federal Government was a government of limited and specific delegations of power.

Fortunately, when President Truman, relying on this statement, attempted to take over the steel mills, under the guise of "implied or inherent powers" as delineated by Attorney General Biddle, he received a stinging rebuke by Judge Pine who rendered the opinion in the case, stating that there were no implied or inherent powers derived from the Constitution. Still the Federal Government persists in operating on supposed inherent powers. It was the action and statement of Attorney General Biddle that started the Liberty Amendment.

The Liberty Amendment will not add to, nor subtract from, the powers delegated under the Constitution, but has for its purpose the restoration of government to its original, fundamental and basic purposes. The Liberty Amendment is in four sections.

CLEAR DEFINITIVE TERMS

"Section 1. The Government of the United States shall not engage in any business, professional, commercial, financial or industrial enterprise except as specified in the Constitution." Now this language is very clear in section 1. It prohibits that which had been implied for prohibition. When Mr. Biddle said that the Government can do anything not specifically prohibited to it, he reversed the intent and purpose of the 9th and 10th Amendments. The Ninth Amendment says that the enumeration of certain rights in the Constitution does not deny nor disperse others retained by the people. The 10th Amendment is a little more explicit, but it deals with powers reserved to the States and to the people.

Attorney General Biddle reversed this in his

viewpoint. Now, we have the problem of knowing that law is, as Aaron Burr said, "whatever is boldly asserted and plausibly maintained." Law is the way it is enforced. And this is what we are living under. If we don't like it, there are three things we can do about it. We can either live with it, or violate it, or change it. And if we want to restore the Constitution, we are going to have to change and alter the interpretations and get it back to a fundamental base. And the Liberty Amendment's first section does exactly this, because, if you read it again, the Government of the United States shall not engage in any business, professional, commercial, financial or industrial enterprise, except as specified in the Constitution. These are clear, definite terms, and the last six words, "except as specified in the Constitution," reconfirm every delegation of power and authority contained in the Constitution, but it has the capacity to retrieve all that has been usurped. And, as Washington said, it is this usurpation of power that is our danger.

TO DEFEND THIS PRINCIPLE

Now, to defend this constitutional arrangement of the first section from the same erosion that has happened to other parts of the Constitution, we have added section 2. Section 2 says the Constitution or laws of any State, or the laws of the United States, shall not be subject to the terms of any foreign or domestic agreement which would abrogate this amendment. In other words it is protected from any group of people, or combination of groups, foreign or domestic, or both, that might at any time, by edict, invade this constitutional provision and alter it. This is a simple protective device but it works.

Section 3 describes the time limit for the liquidation and transfer of these properties to the States and local jurisdiction, and to private enterprise where it is deemed best. Section 3 says that the activities of the U.S. Government which violate the intent and purpose of this amendment shall, within a period of 3 years from the date of the ratification of this amendment, be liquidated, and the properties and facilities affected shall be sold.

That was all of the language of the Liberty Amendment for a long while. It wasn't until 1957, when we had documented the fact of the scope of these invasions upon our private enterprise system, and could clearly identify the potential savings under the terms of these first three sections, that we even talked about the taxation problem. We recognized the truism that, if you cut a dollar off the spending, you cut the dollar off the need for taxation, and when you cut enough off the spending proclivities of the Federal Government, you have cut all of the need off for this particular tax which was applied in 1913. We proved by 1957 that the potential savings under the terms of the first three sections of the Liberty Amendment were adequate to offset the loss of revenue that would result from the repeal of the 16th Amendment.

JANUARY-FEBRUARY-MARCH, 1970

REPEAL 16TH AMENDMENT

On June 10, 1957, the language of the fourth section was added to the Liberty Amendment. It provides: "Three years after the ratification of this amendment the 16th article of amendments to the Constitution of the United States shall stand repealed and thereafter Congress shall not levy taxes on personal incomes, estates, and/or gifts."

Taxing and spending are so interlocked that they cannot be separated. The more you tax the more you spend, or the more you spend the more you tax. That is a truism.

Contrary to the popular concept, the repeal of the 16th amendment does not repeal the tax on corporations. The corporation tax is not an income tax but is an excise tax which was passed in 1909, and held constitutional prior to the adoption of the 16th Amendment. The repeal of the 16th Amendment simply repeals the personal graduated income tax and the graduated gift and estate tax. This would mean that \$45 billion now collected from this source would be retained by the people, increasing purchasing power, and eliminating many controls burdened upon the individual.

The question uppermost in your mind is, How can the Federal Government function with the loss of this \$45 billion?

REDUCE NATIONAL DEBT

Disposal of the assets which I consider to be held by the Federal Government in violation of the Constitution would produce from \$60 to \$70 billion, which would reduce the national debt by that amount, and result in an annual interest saving of nearly \$2.5 billion.

There would be an annual saving of more than \$20 billion now being paid out in subsidies to maintain the various unconstitutional Federal activities.

There would be an annual saving of \$5 billion in the Federal payroll when the persons employed by the Government corporations are transferred to private industry.

There would be an additional \$8 to \$10 billion annual saving by the elimination of goods, services, and facilities now required to support this payroll.

There would be a \$2 billion saving by eliminating foreign economic grants and credits. There would be at least \$4 billion additional revenue generated from the sale of 20 percent of our industrial capacity to private enterprise.

There would be an additional \$5 billion revenue generated by extending the corporation excise tax to unincorporated businesses to place them on an equal competitive basis.

OFFSET TAX REDUCTION

These savings, plus the additional revenues generated, are equal to a total of \$46½ billion annually, or a complete offset for the elimination of the personal income tax.

For years, my opponents at election time have charged me with wanting to sell the U.S. Post Office Department, shipyards, and even the Defense Department, because I introduced and support the Liberty Amendment.

Now let's look at the facts. The Liberty Amendment in the first section states: "The Government of the United States shall not engage in any business, professional, commercial, financial, or industrial enterprise except as specified in the Constitution." What are these exceptions? Article I of the Constitution provides among other things, for the Congress to establish post offices and post roads, to coin money, to raise and support armies, to provide and maintain a navy, and to acquire land from the States for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. But my opponents have never taken the trouble to examine the Constitution.

PURCHASE AND CONSENT

The question has been raised from time to time as to the status of our national parks under the Liberty Amendment. For example, Yosemite is a national park in California. This park was acquired by the Federal Government without constitutional authority, as the Government did not have the consent of our State legislature, nor did they purchase it. Under the Liberty Amendment, the Federal Government would have to make arrangements either to relinquish this park to the State of California, who could, if they wished, sell it back to the Federal Government for \$1, and grant the Federal Government exclusive jurisdiction. On the other hand, it can become a State park, and I can say to you that there is not a State park in California that is not operated more cheaply and efficiently for the benefit of the people than any national park. So you see, there are two alternatives.

I have been questioned about the disposition of the dam and hydroelectric facilities owned by the Federal Government. Their status would be simplified, and most of them are, or should be, self-liquidating. The impounded water belongs to the States, and the Federal Government would own the dams as trustee in perpetuity for the benefit of the people of the State or the compacting States. For example, Hoover Dam would be held in trust for the seven com-

pacting States by the Federal Government and the financial obligation would be paid off in the same manner in which it is now being liquidated.

The Liberty Amendment is properly sponsored by the Liberty Amendment Committee. You cannot have human freedom without economic freedom. They are one and inseparable, and all of us who believe in human freedom must preserve economic freedom.

THREAT TO THE STATES

Several years ago it was proposed that the States should be eliminated. There was a map designed by a former Secretary of the Interior based on the idea that State governments will cease to exist, as a matter of economy, and that, by having them cease to exist, Government would be transferred to regional authorities—nine of them—with three appointed administrators in each of them to govern all of the affairs within the regional authority. That would mean that 27 men appointed by the President would constitute our entire governing body. That program was temporarily put aside, but it still simmers on the back burner, and the Department of the Interior is still rapidly increasing its vast domain.

If the Liberty Amendment is not adopted, the various States will cease to be sovereign. The counties and cities within the States will lose their sovereignty, and the State legislatures will become mere errand boys for a vast and monolithic Federal Government. Action must be taken positively and promptly to put the Federal Government in its constitutional place and thus preserve a Union of 50 sovereign States.

For this reason, I have again introduced House Joint Resolution 23, known as the Liberty Amendment to the Constitution, with a firm conviction that he who is governed best is governed least. In order to attain this amendment, all good American should give it active support by urging their State legislature to adopt a resolution in support of the Liberty Amendment.

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